

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.**

In the Matter of

**CERTAIN INDUSTRIAL CONTROL
SYSTEM SOFTWARE, SYSTEMS
USING SAME AND COMPONENTS
THEREOF**

Inv. No. 337-TA-1020

INSTITUTION OF INVESTIGATION

Institution of Investigation pursuant to 19 U.S.C. § 1337

AGENCY: U.S. International Trade Commission

ACTION: Notice

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 5, 2016, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, on behalf of Rockwell Automation, Inc. of Milwaukee, Wisconsin. A letter supplementing the complaint was filed on August 12, 2016. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain industrial control system software, systems using same and components thereof by reason of infringement of U.S. Patent No. 6,675,226 (“the ’226 patent”); U.S. Patent No. 6,816,817 (“the ’817 patent”); U.S. Patent No. 6,819,960 (“the ’960 patent”); U.S. Patent No. 6,978,225 (“the ’225 patent”); U.S. Patent No. 7,130,704 (“the ’704 patent”); U.S. Patent No. 7,650,196 (“the ’196 patent”); U.S. Patent No. 7,693,585 (“the ’585 patent”); and U.S. Patent No. 8,799,800 (“the ’800 patent”). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205-2000. General information concerning the Commission may also be obtained by accessing its internet server at

<https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2560.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.10 (2016).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on September 13, 2016, **ORDERED THAT** –

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain industrial control system software, systems using the same, and components thereof by reason of infringement of one or more of claims 1, 9, and 10 of the '226 patent; claims 21, 25-27, and 30-35 of the '817 patent; claims 1-5, 7, 10, and 23-26 of the '960 patent; claims 1 and 3-6 the '225 patent; claims 1-3, 9, 13-16, 20 and 21 of the '704 patent; claims 1-6, 8-10, 12, 13, 15, and 16 of the '196 patent; claims 1, 2, 4, 5, 7, 15, 17-19, 21, and 25 of the '585 patent; claims 1, 3-5, and 7-15 of the '800 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 C.F.R. § 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties or other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. §§ 1337(d)(1), (f)(1), (g)(1);

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Rockwell Automation, Inc.
1201 South 2nd Street
Milwaukee, WI 53204-2410

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

3S-smart Software Solutions, GmbH
Memminger Str. 151
87439 Kempten
Germany

Advantech Corporation
380 Fairview Way
Milpitas, CA 95035

Advantech Co., Ltd.
No. 1, Alley 20, Lane 26,
Rueiguang Road, Neihu District,
Taipei City, Taiwan

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Suite 401, Washington, D.C. 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.13. Pursuant to 19 C.F.R. §§ 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: September 13, 2016

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

CERTAIN INDUSTRIAL CONTROL SYSTEM
SOFTWARE, SYSTEMS USING SAME AND
COMPONENTS THEREOF

Inv. No. 337-TA-1020

DESIGNATION OF OUII ATTORNEY
FOR SERVICE OF PROCESS

The Office of Unfair Import Investigations ("OUII") hereby designates Peter Sawert, Esq. (202) 205-3228, Peter.Sawert@usitc.gov, as OUII's lead attorney for service of process. It is requested that all documents served by the Commission or filed by the parties in the above-referenced investigation be served upon this attorney.

Respectfully submitted,


Margaret Macdonald, Director

OFFICE OF UNFAIR IMPORT INVESTIGATIONS
U.S. International Trade Commission
500 E Street, S.W., Suite 401
Washington, D.C. 20436
(202) 205-2560
(202) 205-2158 (facsimile)

September 13, 2016

**CERTAIN INDUSTRIAL CONTROL SYSTEM
SOFTWARE, SYSTEMS USING SAME AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1020

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **NOTICE OF INSTITUTION OF INVESTIGATION** has been served upon the following parties as indicated, on 9/14/2016



Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

Complainants:

Rockwell Automation, Inc.
1201 South 2nd Street
Milwaukee, Wisconsin 53204

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

On Behalf of Complainants:

David F. Nickel
Foster, Murphy, Altman & Nickel PC
1899 L Street NW, Suite 1150
Washington, DC 20036

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Respondents:

3S-Smart Software Solutions, GmbH
Memminger Str. 151
87439 Kempten
Germany

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Advantech Corporation
380 Fairview Way
Milpitas, CA 95035

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

**CERTAIN INDUSTRIAL CONTROL SYSTEM
SOFTWARE, SYSTEMS USING SAME AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1020

Certificate of Service – Page 2

Advantech Co., Ltd.
No. 1 Alley 20, Lane 26
Rueiguang Road, Neihu District
Taipei City, Taiwan

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Embassy:

Embassy of the Federal Republic of Germany
4645 Reservoir Road, NW
Washington, DC 20007

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Taipei Economic and Cultural Representative Office:

Taipei Economic and Cultural Representative Office
4201 Wisconsin Avenue, NW
Washington, DC 20016

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Government Agencies:

Edward T. Hand, Chief
Foreign Commerce Section
Antitrust Division
U.S. Department of Justice
450 5th Street NW, Room 11000
Washington, DC 20530

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

U.S. Bureau of Customs and Border Protection
Intellectual Property Rights Branch
Mint Annex Building
799 9th Street, NW, 7th floor
Washington, DC 20229-1177

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Elizabeth Kraus, Deputy Director
International Antitrust, Office of
International Affairs
Federal Trade Commission
600 Pennsylvania Avenue, Room 498
Washington, DC 20580

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

**CERTAIN INDUSTRIAL CONTROL SYSTEM
SOFTWARE, SYSTEMS USING SAME AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1020

Certificate of Service – Page 3

Dale D. Berkley, Ph.D., J.D.
Office of the General Counsel, PHD, NIH Branch
National Institutes of Health
31 Center Drive
Bldg. 31, Rm. 47
Bethesda, MD 20892

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____



UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC 20436

September 14, 2016

Rockwell Automation Inc.
1201 South 2nd Street
Milwaukee, Wisconsin 53204

**Re: Certain Industrial Control System Software, Systems Using Same, and
Components Thereof
Inv. No. 337-TA-1020**

Dear Sir/Madam:

This letter is to advise you that the U.S. International Trade Commission has instituted an investigation pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). A copy of the Commission's notice of investigation is enclosed. Also enclosed is the Section 337 Mediation Program brochure. After reviewing the brochure, please sign and return the enclosed certification of receipt.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa R. Barton".

Lisa R. Barton
Secretary

Enclosures:

1. Notice of Investigation
2. Publication Regarding the Section 337 Mediation Program
3. Certification of Receipt of Mediation Materials



UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC 20436

September 14, 2016

David F. Nickel
Foster, Murphy, Altman & Nickel PC
1899 L Street NW Suite 1150
Washington, DC 20036

**Re: Certain Industrial Control System Software, Systems Using Same, and
Components Thereof
Inv. No. 337-TA-1020**

Dear David F. Nickel:

This letter is to advise you that the U.S. International Trade Commission has instituted an investigation pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). A copy of the Commission's notice of investigation is enclosed. Also enclosed is the Section 337 Mediation Program brochure. After reviewing the brochure, please sign and return the enclosed certification of receipt.

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Lisa R. Barton
Secretary

Enclosures:

1. Notice of Investigation
2. Publication Regarding the Section 337 Mediation Program
3. Certification of Receipt of Mediation Materials



UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC 20436
September 14, 2016

3S-Smart Software Solutions, GmbH
Memminger Str. 151
87439 Kempten
Germany

**Re: Certain Industrial Control System Software, Systems Using Same, and Components
Thereof**
Inv. No. 337-TA-1020

Dear Sir/Madam:

This letter is to advise you that the United States International Trade Commission has instituted an investigation pursuant to Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). **3S-Smart Software Solutions, GmbH** is a named respondent in this investigation.

We are hereby serving you with a copy of the Complaint and the Notice of Investigation issued in this matter. Enclosed is a copy of the Code of Federal Regulations. Also enclosed is a the Section 337 Mediation Program brochure. After reviewing this brochure, please sign and return the enclosed certification of receipt.

Please note that the Notice requires a response to the allegations in the Complaint and the response must be received not later than twenty (20) days after the date of service of the Complaint. Failure to file a response may result in inferences being drawn against your interests.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa R. Barton".

Lisa R. Barton
Secretary

Enclosures:

1. Complaint
2. Notice of Investigation
3. Code of Federal Regulation
4. Publication Regarding the Section 337 Mediation Program
5. Certification of Receipt of Mediation Materials



UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC 20436
September 14, 2016

Advantech Corporation
380 Fairview Way
Milpitas, CA 95035

Re: Certain Industrial Control System Software, Systems Using Same, and Components Thereof
Inv. No. 337-TA-1020

Dear Sir/Madam:

This letter is to advise you that the United States International Trade Commission has instituted an investigation pursuant to Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). **Advantech Corporation** is a named respondent in this investigation.

We are hereby serving you with a copy of the Complaint and the Notice of Investigation issued in this matter. Enclosed is a copy of the Code of Federal Regulations. Also enclosed is a the Section 337 Mediation Program brochure. After reviewing this brochure, please sign and return the enclosed certification of receipt.

Please note that the Notice requires a response to the allegations in the Complaint and the response must be received not later than twenty (20) days after the date of service of the Complaint. Failure to file a response may result in inferences being drawn against your interests.

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Lisa R. Barton
Secretary

Enclosures:

1. Complaint
2. Notice of Investigation
3. Code of Federal Regulation
4. Publication Regarding the Section 337 Mediation Program
5. Certification of Receipt of Mediation Materials



UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC 20436

September 14, 2016

Advantech Corporation Ltd.
No. 1 Alley 20, Lane 26
Rueiguang Road, Neihu District
Taipei City, Taiwan

**Re: Certain Industrial Control System Software, Systems Using Same, and Components
Thereof**
Inv. No. 337-TA-1020

Dear Sir/Madam:

This letter is to advise you that the United States International Trade Commission has instituted an investigation pursuant to Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). **Advantech Corporation Ltd.** is a named respondent in this investigation.

We are hereby serving you with a copy of the Complaint and the Notice of Investigation issued in this matter. Enclosed is a copy of the Code of Federal Regulations. Also enclosed is a the Section 337 Mediation Program brochure. After reviewing this brochure, please sign and return the enclosed certification of receipt.

Please note that the Notice requires a response to the allegations in the Complaint and the response must be received not later than twenty (20) days after the date of service of the Complaint. Failure to file a response may result in inferences being drawn against your interests.

Sincerely,

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Lisa R. Barton
Secretary

Enclosures:

1. Complaint
2. Notice of Investigation
3. Code of Federal Regulation
4. Publication Regarding the Section 337 Mediation Program
5. Certification of Receipt of Mediation Materials



UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC 20436

September 14, 2016

Embassy of the Federal Republic of Germany
4645 Reservoir Road, NW
Washington, DC 20007

**Re: Certain Industrial Control System Software, Systems Using Same, and
Components Thereof
Inv. No. 337-TA-1020**

Dear Sir/Madam:

This letter is to advise you that the United States International Trade Commission has instituted an investigation pursuant to Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). One or more of the parties named in the investigation is located in **Germany**.

Pursuant to Commission Rule 210.11(a) (3), we are hereby serving you with a copy of the Complaint filed in this investigation together with a copy of the Commission's Notice of Investigation.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa R. Barton".

Lisa R. Barton
Secretary

Enclosures:

1. Complaint
2. Notice of Investigation



UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC 20436

September 14, 2016

Taipei Economic and Cultural Representative Office
4201 Wisconsin Avenue, NW
Washington, DC 20016

**Re: Certain Industrial Control System Software, Systems Using Same, and
Components Thereof
Inv. No. 337-TA-1020**

Dear Sir/Madam:

This letter is to advise you that the United States International Trade Commission has instituted an investigation pursuant to Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). One or more of the parties named in the investigation is located in **Taiwan**.

Pursuant to Commission Rule 210.11(a) (3), we are hereby serving you with a copy of the Complaint filed in this investigation together with a copy of the Commission's Notice of Investigation.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa R. Barton". The signature is fluid and cursive, written over a light gray circular background.

Lisa R. Barton
Secretary

Enclosures:

1. Complaint
2. Notice of Investigation



UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC 20436

September 14, 2016

Edward T. Hand, Chief
Foreign Commerce Section
Antitrust Division
U.S. Dept of Justice
450 5th Street NW, Room 11000
Washington, DC 20530

**Re: Certain Industrial Control System Software, Systems Using Same, and
Components Thereof
Inv. No. 337-TA-1020**

Dear Mr. Hand:

This letter is to advise you that the United States International Trade Commission has instituted an investigation pursuant to Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). A copy of the Notice of Investigation is enclosed. Non-confidential copies of the Complaint and any supplements filed in the investigation will be provided upon request. Requests should be directed to Docket Services at (202) 205-1802.

If you have any questions concerning this investigation, please contact the Commission Investigative Attorney whose name and telephone number appear in the enclosed Notice.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa R. Barton".

Lisa R. Barton
Secretary

Enclosure:

1. Notice of Investigation



UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC 20436

September 14, 2016

Intellectual Property Rights Branch
Regulations and Rulings
Office of International Trade
U.S. Customs and Border Protection
90 K Street, NE, 10th floor
Washington, DC 20229-1177

**Re: Certain Industrial Control System Software, Systems Using Same, and
Components Thereof
Inv. No. 337-TA-1020**

Dear Sir/Madam:

This letter is to advise you that the United States International Trade Commission has instituted an investigation pursuant to Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). A copy of the Notice of Investigation is enclosed. Non-confidential copies of the Complaint and any supplements filed in the investigation will be provided upon request. Requests should be directed to Docket Services at (202) 205-1802.

If you have any questions concerning this investigation, please contact the Commission Investigative Attorney whose name and telephone number appear in the enclosed Notice.

Sincerely,

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Lisa R. Barton
Secretary

Enclosure:

1. Notice of Investigation



UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC 20436

September 14, 2016

Elizabeth Kraus, Deputy Director
International Antitrust, Office of
International Affairs
Federal Trade Commission
600 Pennsylvania Avenue, Room 498
Washington, DC 20580

**Re: Certain Industrial Control System Software, Systems Using Same, and
Components Thereof
Inv. No. 337-TA-1020**

Dear Ms. Kraus:

This letter is to advise you that the United States International Trade Commission has instituted an investigation pursuant to Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). A copy of the Notice of Investigation is enclosed. Non-confidential copies of the Complaint and any supplements filed in the investigation will be provided upon request. Requests should be directed to Docket Services at (202) 205-1802.

If you have any questions concerning this investigation, please contact the Commission Investigative Attorney whose name and telephone number appear in the enclosed Notice.

Sincerely,

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Lisa R. Barton
Secretary

Enclosure:

1. Notice of Investigation



UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC 20436

September 14, 2016

Dale D. Berkley, Ph.D., J.D.
Office of the General Counsel, PHD, NIH Branch
National Institutes of Health
31 Center Drive
Bldg. 31, Rm. 47
Bethesda, MD 20892

**Re: Certain Industrial Control System Software, Systems Using Same, and
Components Thereof
Inv. No. 337-TA-1020**

Dear Mr. Berkley:

This letter is to advise you that the United States International Trade Commission has instituted an investigation pursuant to Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). A copy of the Notice of Investigation is enclosed. Non-confidential copies of the Complaint and any supplements filed in the investigation will be provided upon request. Requests should be directed to Docket Services at (202) 205-1802.

If you have any questions concerning this investigation, please contact the Commission Investigative Attorney whose name and telephone number appear in the enclosed Notice.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa R. Barton".

Lisa R. Barton
Secretary

Enclosure:

1. Notice of Investigation