

**PUBLIC VERSION**

**UNITED STATES INTERNATIONAL TRADE COMMISSION**

**Washington, D.C.**

**In the Matter of**

**CERTAIN INDUSTRIAL AUTOMATION  
SYSTEMS AND COMPONENTS THEREOF  
INCLUDING CONTROL SYSTEMS,  
CONTROLLERS, VISUALIZATION  
HARDWARE, MOTION CONTROL  
SYSTEMS, NETWORKING EQUIPMENT,  
SAFETY DEVICES, AND POWER  
SUPPLIES**

**Inv. No. 337-TA-1074**

**ORDER NO. 39: INITIAL DETERMINATION GRANTING-IN-PART  
COMPLAINANT'S MOTION FOR SUMMARY  
DETERMINATION THAT IT HAS SATISFIED THE ECONOMIC  
PRONG OF THE DOMESTIC INDUSTRY REQUIREMENT**

(July 12, 2018)

On May 25, 2018, Complainant Rockwell Automation, Inc. ("Rockwell") filed a motion for summary determination that it has satisfied the economic prong of the domestic industry requirement with respect to the asserted trademarks and copyrights (Motion Docket No. 1074-026). Respondent Radwell International, Inc. ("Radwell") filed a response in opposition on June 7, 2018, but withdrew its opposition in part on June 26, 2018. The Commission Investigative Staff ("Staff") filed a response in support of the motion on June 7, 2018. Rockwell filed a reply brief on June 12, 2018.


**I. BACKGROUND**

On October 10, 2017, the Commission ordered the institution of an investigation based on Rockwell's complaint for alleged 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

**PUBLIC VERSION**

of certain industrial automation systems and components thereof including control systems, controllers, visualization hardware, motion and motor control systems, networking equipment, safety devices, and power supplies” under subsection (a)(1)(B) and (C) of section 337 by reason of infringement of various copyrights and trademarks.<sup>1</sup> 82 Fed. Reg. 48113-15 (Oct. 16, 2017). The scope of the investigation includes a determination of “whether an industry in the United States exists as required by subsection (a)(2) of section 337.” *Id.*

Rockwell relies upon certain of its product lines to establish a domestic industry pursuant to subsection (a)(2) of section 337. With respect to the asserted trademarks, Rockwell relies upon its ControlLogix®, CompactLogix®, and PanelView® product lines:

Name	Reg. No.	Example Embodiment	Domestic Industry Product Lines
A-B (and Design)	1172995		ControlLogix CompactLogix PanelView
A-B (and Design)	696401		
A-B (and Design)	693780		
ALLEN-BRADLEY	1172994	ALLEN-BRADLEY	
ALLEN-BRADLEY	712800		
ALLEN-BRADLEY	712836		
ROCKWELL AUTOMATION	2510226	ROCKWELL AUTOMATION	
ROCKWELL AUTOMATION	2671196		
ROCKWELL AUTOMATION	2701786		

Motion Memo. at 2 (citing Decl. of Rod Michael, ¶8).<sup>2</sup>

<sup>1</sup> Rockwell’s complaint also alleges violations of subsection (a)(1)(A) of section 337.

<sup>2</sup> Asserted U.S. Trademark Reg. No. 2,412,742, is not addressed in Rockwell’s motion. *See* Staff Resp. at 3 n.1.

## PUBLIC VERSION

With respect to the asserted copyrights, Rockwell relies upon its ControlLogix® and CompactLogix® product lines, which include certain copyrighted firmware:

Name	Reg. No.	Representative Product Line
Firmware (Version 16) for ControlLogix® L6 Controllers	TX0008389887	ControlLogix L6 Products
Firmware (Version 20) for ControlLogix® L6 Controllers	TX0008390077	
Firmware (Version 20) for ControlLogix® L7 Controllers	TX0008390088	ControlLogix L7 Products
Firmware (Version 30) for ControlLogix® L7 Controllers	TX0008390111	
Firmware (Version 30) for ControlLogix® L8 Controllers	TX0008390091	ControlLogix L8 Products
Firmware (Version 16) for CompactLogix® L3x Controllers	TX0008389890	CompactLogix L3x Products
Firmware (Version 20) for CompactLogix® L3x Controllers	TX0008390098	
Firmware (Version 20) for CompactLogix® L3y Controllers	TX0008390094	CompactLogix L3y Products
Firmware (Version 30) for CompactLogix® L3y Controllers	TX0008390116	
Firmware (Version 30) for CompactLogix® L3z Controllers	TX0008390084	CompactLogix L3z Products

Motion Memo. at 4 (citing Michael Decl., ¶12).

## II. LEGAL STANDARD

The domestic industry requirement under section 337 arises from the statutory language governing intellectual property-based proceedings in subsection 337(a)(2), which requires that a complainant establish that “an industry in the United States, relating to the articles protected by the patent, copyright, trademark, mask work, or design concerned, exists or is in the process of being established.” 19 U.S.C. § 1337(a)(2). Subsection (3) of section 337(a) provides:

For purposes of paragraph (2), an industry in the United States shall be considered to exist if there is in the United States, with respect to the articles protected by the patent, copyright, trademark, mask work, or design concerned –

## PUBLIC VERSION

- (A) significant investment in plant and equipment;
- (B) significant employment of labor or capital; or
- (C) substantial investment in its exploitation, including engineering, research and development, or licensing.

19 U.S.C. § 1337(a)(3). The domestic industry requirement consists of an “economic prong” and a “technical prong.” *Certain Stringed Musical Instruments*, Inv. No. 337-TA-586, Comm’n Op. at 13, 2009 WL 5134139, at \*10 (May 16, 2008). The “economic prong” of the domestic industry requirement is satisfied when it is determined that the economic activities and investments set forth in one of the subprongs of subsection 337(a)(3) has taken place. *Certain Variable Speed Wind Turbines & Components Thereof*, Inv. No. 337-TA-376, USITC Pub. No. 3003, Comm’n Op. at 21 (Nov. 1996).

Commission Rule 210.18 states that summary determination shall be rendered if the pleadings and evidence “show that there is no genuine issue as to any material fact and that the moving party is entitled to a summary determination as a matter of law.” 19 C.F.R. § 210.18(b). The evidence “must be viewed in the light most favorable to the party opposing the motion . . . with doubts resolved in favor of the nonmovant.” *Crown Operations Int’l, Ltd. v. Solutia, Inc.*, 289 F.3d 1367, 1375 (Fed. Cir. 2002) (citations omitted); *see also Xerox Corp. v. 3Com Corp.*, 267 F.3d 1361, 1364 (Fed. Cir. 2001) (“When ruling on a motion for summary judgment, all of the nonmovant’s evidence is to be credited, and all justifiable inferences are to be drawn in the nonmovant’s favor.”). “Issues of fact are genuine only ‘if the evidence is such that a reasonable [fact finder] could return a verdict for the nonmoving party.’” *Crown Operations*, 289 F.3d at 1375 (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). The trier of fact should “assure itself that there is no reasonable version of the facts, on the summary judgment record, whereby the nonmovant could prevail, recognizing that the purpose of summary

## PUBLIC VERSION

judgment is not to deprive a litigant of a fair hearing, but to avoid an unnecessary trial.” *EMI Group N. Am., Inc. v. Intel Corp.*, 157 F.3d 887, 891 (Fed. Cir. 1998) (citations omitted). “In other words, ‘[s]ummary judgment is authorized when it is quite clear what the truth is,’ and the law requires judgment in favor of the movant based upon facts not in genuine dispute.” *Paragon Podiatry Lab., Inc. v. KLM Labs., Inc.*, 984 F.2d 1182, 1185 (Fed. Cir. 1993) (citations omitted).

### III. DISCUSSION

For its domestic industry, Rockwell relies on investments in its ControlLogix®, CompactLogix®, and PanelView® product lines that are alleged to be protected by nine of the asserted trademarks in this investigation. Motion Memo. at 1-3. Rockwell further alleges that certain ControlLogix® and CompactLogix® products are protected by the asserted copyrights. *Id.* at 3-4. Rockwell relies on a declaration by Dr. Stephen D. Prowse, who identifies significant employment of labor and capital with respect to these products. *Id.* at 10-14 (citing Prowse Decl., ¶¶9-38). There is no opposition to Rockwell’s motion with respect to the asserted trademarks, but Radwell opposes the motion with respect to the asserted copyrights.

#### A. Rockwell’s Domestic Industry Investments

Rockwell relies on three categories of domestic industry investments described by Rodney Michael, Rockwell’s Director of Global Market Access Strategy: (1) manufacturing of certain domestic industry products, (2) customer support and maintenance for its products, and (3) research and development, and engineering of its products. Motion Memo. at 4-9 (citing Michael Decl. ¶¶15-33).

##### 1. Domestic Manufacturing

With respect to the manufacturing of domestic industry products, Mr. Michael explains that “Rockwell’s ControlLogix® and most of its PanelView® product lines are manufactured,

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.