

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [-] To Chairmen
- (D) [X] No distribution

**Datasheet for the decision
of 15 November 2018**

Case Number: T 0952/15 - 3.5.03

Application Number: 10012816.4

Publication Number: 2273331

IPC: G05B19/042, G06F11/14,
G06F21/00, G05B19/048

Language of the proceedings: EN

Title of invention:

Safety controller providing rapid recovery of safety program data

Patent Proprietor:

Rockwell Automation Technologies, Inc.

Opponent:

WAGO Kontakttechnik GmbH & Co. KG

Headword:

Safety controller/ROCKWELL

Relevant legal provisions:

EPC Art. 123(2)

Keyword:

Amendments - added subject-matter (yes)



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 0952/15 - 3.5.03

D E C I S I O N
of Technical Board of Appeal 3.5.03
of 15 November 2018

Appellant: Rockwell Automation Technologies, Inc.
(Patent Proprietor) 1 Allen-Bradley Drive, 10
Mayfield Heights, OH 44124 (US)

Representative: Grünecker Patent- und Rechtsanwälte
PartG mbB
Leopoldstraße 4
80802 München (DE)

Respondent: WAGO Kontakttechnik GmbH & Co. KG
(Opponent) Hansastr. 27
32423 Minden (DE)

Representative: Lang, Johannes
Bardehle Pagenberg Partnerschaft mbB
Patentanwälte, Rechtsanwälte
Prinzregentenplatz 7
81675 München (DE)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 4 March 2015
revoking European patent No. 2273331 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairman B. Noll
Members: K. Schenkel
S. Fernández de Córdoba

Summary of Facts and Submissions

- I. This case concerns an appeal filed by the proprietor against the decision of the opposition division revoking European patent No. 2 273 331.
- II. The opposition division held, *inter alia*, that the subject-matter of claim 1 as granted did not involve an inventive step having regard to the disclosure of document E3 (=EP 1 220 094 A1).
- III. In its statement of grounds of appeal, the appellant (proprietor) requested that the decision under appeal be set aside and that the opposition be rejected.
- IV. With its reply to the statement of grounds of appeal, the respondent (opponent) requested that the appeal be dismissed.
- V. Both parties conditionally requested oral proceedings.
- VI. In a communication following a summons to oral proceedings and without prejudice to its final decision, the board expressed its view, *inter alia*, that the subject-matter of claim 1 as granted lacked an inventive step (Articles 52(1) and 56 EPC) having regard to the disclosure of E3 and taking into account the common general knowledge of the person skilled in the art.
- VII. Oral proceedings were held on 15 November 2018.

In the oral proceedings, following a discussion on inventive step of the subject-matter of claim 1 as granted, the appellant filed a new set of claims (main request) replacing the claims as granted.

The appellant's final requests were that the decision under appeal be set aside and that the patent be maintained in amended form on the basis of the main request as filed during oral proceedings.

The respondent requested that the appeal be dismissed.

At the end of the oral proceedings, after deliberation by the board, the chairman announced the board's decision.

VIII. Claim 1 as filed during oral proceedings reads as follows:

"A safety industrial controller for executing a safety program and establishing whether downloaded safety program data is identical to safety program data that has been previously certified, said certified safety program data previously running on said safety industrial controller and having been lost, comprising:

a memory (56, 58) storing a control program;

characterized in that

the controller (10) is adapted to execute the stored control program to:

(i) download safety program data to the memory (56, 58) of the controller (10);

(ii) read the downloaded safety program data in the memory (56, 58) to derive a signature functionally dependant on values of the downloaded safety program data in the memory (56, 58);

(iii) compare the derived signature to a stored signature derived from said previously certified safety program data, said stored signature having been generated and derived by the safety industrial controller from the safety program data that was lost afterwards and which had been previously certified and stored in the memory of the safety industrial controller,

(iv) uploading the derived signature for approval by a user when the derived signature matches the stored signature for establishing whether the downloaded safety program data is identical to safety program data that has been previously certified."

Reasons for the Decision

1. Claim 1 - Article 123(2) EPC

1.1 Claim 1 is specifically directed to a safety controller described in paragraphs [0051] to [0053] of the application as filed for verifying that safety program data downloaded to the safety controller is identical to safety program data which was previously running on the safety controller and has been lost. Paragraph [0051] states:

"In the case of power loss, the snapshots 82 and 84, as indicated by process block 106, as held in non-volatile memory, may be used to quickly re-establish the safety tasks 48. In the case of loss or damage to the snapshots 82 and 84 or where it is desired to revert to a previously certified version, a new snapshot is downloaded from the terminal 32 to the snapshot areas 78 and 80 as indicated by process block 102."

It is further stated in paragraph [0052]:

"At process block 108, derived global signature 94 computed from the snapshots 82 and 84 is compared to the stored global signature 94 stored as part of the downloaded or stored snapshots 82 and 84."

Thus, paragraphs [0051] and [0052] disclose that a signature is either calculated from stored safety program data and compared with a signature contained in the stored safety program data or calculated from downloaded safety program data and is compared with a signature which has been received as a part of the downloaded data.

- 1.2 Claim 1 includes feature (iii) stating that the controller is adapted to execute a program stored in a memory of the controller to "compare the derived signature to a stored signature derived from said previously certified safety program data, said stored signature having been generated and derived by the safety industrial controller from the safety program data that was lost afterwards and which had been previously certified and stored in the memory of the safety industrial controller".

This feature defines that the signature calculated from downloaded safety program data is compared with a stored signature derived from the previously certified safety program data.

- 1.3 The definition in claim 1 is therefore different from the disclosure in paragraphs [0051] and [0052] since according to claim 1 the controller is adapted to use a stored signature which has been derived from previously

certified safety program data for comparison with a signature calculated from downloaded safety program data.

- 1.4 When the snapshot is re-established by means of a downloaded snapshot, the signature derived from it is compared to a global signature stored as part of the downloaded snapshot. The application as filed does not directly and unambiguously disclose a controller that compares the signature calculated from downloaded safety program data to any signature other than that received with the downloaded safety program data.

The appellant did not provide any arguments against this objection.

- 1.5 Thus, claim 1 does not comply with Article 123(2) EPC.

2. As there is no allowable request, the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



G. Rauh

B. Noll

Decision electronically authenticated