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**Datasheet for the decision
of 3 December 2021**

Case Number: T 0615/18 - 3.5.03

Application Number: 07114841.5

Publication Number: 1895740

IPC: H04L29/06

Language of the proceedings: EN

Title of invention:

Structured data support using metadata and a type library in a control system

Patent Proprietor:

Rockwell Automation Technologies, Inc.

Opponents:

Siemens Aktiengesellschaft
Schneckenbühl, Robert

Headword:

Invalid signature by a team manager/ROCKWELL

Relevant legal provisions:

EPC Art. 111(1)
EPC R. 103(1)(a), 111(1), 113(1)
RPBA 2020 Art. 11

Keyword:

Signature of a person extraneous to the opposition division on behalf of the second examiner - substantial procedural violation (yes)

Remittal - fundamental deficiency in first-instance proceedings (yes)

Reimbursement of appeal fees - (yes)

Decisions cited:

J 0016/17, T 1170/05, T 2076/11, T 0989/19, T 2348/19



Beschwerdekammern

Boards of Appeal

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Case Number: T 0615/18 - 3.5.03

D E C I S I O N
of Technical Board of Appeal 3.5.03
of 3 December 2021

Appellant I: Siemens Aktiengesellschaft
(Opponent 1) Werner-von-Siemens-Straße 1
80333 München (DE)

Representative: Siemens AG
Postfach 22 16 34
80506 München (DE)

Appellant II: Schnekenbühl, Robert
(Opponent 2) St.-Anna-Str. 15
80538 Munich (DE)

Representative: DTS Patent- und Rechtsanwälte
Schnekenbühl und Partner mbB
Marstallstrasse 8
80539 München (DE)

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

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

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
31 January 2018 concerning maintenance of the
European Patent No. 1895740 in amended form.**

Composition of the Board:

Chair	K. Bengi-Akyürek
Members:	J. Eraso Helguera
	F. Bostedt


Summary of Facts and Submissions


I. This case concerns the appeals filed by opponent 1 ("appellant I"), opponent 2 ("appellant II") and the proprietor ("appellant III") against the interlocutory decision of the opposition division.

The opposition division held that the opposed patent as amended according to a "third auxiliary request" met the requirements of the EPC.

II. According to EPO Form 2309.1 ("Minutes of the oral proceedings - introduction of the parties"), oral proceedings were held on 15 December 2017 in the presence of all three members of the opposition division. According to EPO Form 2309.2 ("Minutes of the oral proceedings - conclusion of the proceedings"), the opposition division's interlocutory decision was announced at the end of those oral proceedings.

III. EPO Form 2309.2 was signed by the chairman and the second examiner present in the oral proceedings:


.....
Pieper, Thomas
Chairman


.....
Schwibinger, Hans
Minute Writer

The electronic version of EPO Form 2309.2 bears the same names:


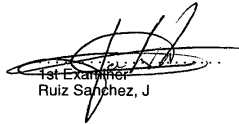



signed:
Pieper, Thomas
.....
Chairman

signed:
Schwibinger, Hans
.....
Minute Writer

IV. EPO Form 2339 (entitled in the European Register as "Decision of the Opposition Division and instruction" dated 22 December 2017) was signed by the chairman, the first examiner, and, instead of by the second examiner, whose name still appears in this function on the same form, by someone else with the indication that this person was the "T.M." of the second examiner:

22 dec 17
Date

		
Chairman Pieper, Thomas	1st Examiner Ruiz Sanchez, J	2nd Examiner Schwibinger, Hans	Legally qualified member
		L. PINTO (T.M. of H. SCHWIBINGER)	

V. EPO Form 2331 ("Interlocutory decision in Opposition proceedings" posted on 31 January 2018) bears the names of all three members of the opposition division, including the second examiner's name:

Opposition Division:

Chairman:	Pieper, Thomas
2nd Examiner:	Schwibinger, Hans
1st Examiner:	Ruiz Sanchez, J

VI. Both appellant I and appellant II request that the decision under appeal be set aside and that the patent be revoked.

Appellant III requests that the decision under appeal be set aside and that the opposed patent be maintained

as granted (main request) or in amended form according to the claims of either of two auxiliary requests. They further request that appellant I's and appellant II's appeal be rejected as inadmissible under Article 108 EPC or, in the alternative, that they be dismissed.

VII. Appellant III indicated that, in view of the preliminary opinion expressed in the board's first communication, they committed to immediately withdraw their request for oral proceedings once the other appellants withdrew their requests.

Appellant I and appellant II withdrew their requests for oral proceedings in response to the board's second communication.

The board understood appellant III's response to the first communication as a conditional withdrawal of their request for oral proceedings, the condition being the withdrawal of appellants I and II's requests for oral proceedings. As the condition occurred, the board cancelled the oral proceedings.

Reasons for the Decision

1. *Signatures on the reasoned decision*

1.1 Pursuant to Rule 113(1) EPC, any decision from the European Patent Office must be signed by, and state the name of, the employee responsible.

1.2 In T 2348/19 (Reasons 1.2), the present board (albeit in a different composition) endorsed the established view that this requirement is not just a mere formality but an essential procedural step in the decision-taking

process. The name and the signature serve to identify the decision's authors and express that they unconditionally assume responsibility for its content. The requirement laid down in Rule 113(1) EPC is aimed at preventing arbitrariness and abuse and at ensuring that it can be verified that the competent body has taken the decision. It therefore constitutes an embodiment of the rule of law. According to settled case law, a violation of the requirement under Rule 113(1) EPC amounts to a substantial procedural violation (cf. J 16/17, Reasons 2.2 and 2.3; T 2076/11, Reasons 1; T 989/19, Reasons 3). Moreover, a Board may address such a substantial procedural violation of its own motion (cf. T 989/19, Reasons 2).

- 1.3 The person who signed EPO Form 2339 instead of the second examiner was never part of the opposition division. In particular, he did not participate in the decision-making process that led to the decision announced orally at the end of the oral proceedings before the opposition division. It can only be assumed that this person, in the function of "T.M.", which - the board assumes - means "team manager", of the second examiner, signed the reasoned decision on behalf of the second member, without there being any indication that the composition of the opposition division had actually been changed.

- 1.4 As explained in T 2348/19 (Reasons 1.3), if a member of the department of first instance, who participated in the oral proceedings before that department, is unable to act at the time the reasoned decision is to be issued, for example due to death or a longer lasting illness, one of the other members may sign on behalf of the incapacitated member. In such a situation, a written explanation as to why one member is signing on

behalf of another must be provided (see T 1170/05, Reasons 2.4; T 2076/11, Reasons 3, and T 989/19, Reasons 5).

1.5 However, in the case at hand, the decision was not signed by the second examiner but, in his stead, by a person who was not a member of the opposition division. There is no guarantee that the decision, and the reasons given therein, accurately reflects the majority point of view of all members who have taken part in the first-instance oral proceedings. Such a contravention of Rule 113(1) EPC constitutes a substantial procedural violation.

1.6 In response to the board's communication under Article 15(1) RPBA 2020, appellant I submitted that the decision, i.e. EPO Form 2339, was initially indeed signed by all members of the division. Only the decision that was subsequently notified to the parties and put into the electronic file was signed by the second examiner's line manager. The reason for this was that a mistake had been identified in the decision, so that the decision needed to be reprinted, and that at that time the second examiner could not sign it due to a longer absence. Appellant I provided several documents (*inter alia* from the EPO's paper file) as evidence for their submission. They concluded that a conclusive justification for the wrong signature was provided *ex tunc*, that no substantial procedural violation occurred and that a remittal to the opposition division was not justified.

1.7 Appellant II referred to appellant I's submission and argued that the paper file, which was open to public file inspection, included a full and detailed explanation as to why the team manager signed on behalf

of the second examiner. There was no violation of Rule 113(1) EPC and thus no substantial procedural violation.

2. The board considers that the following facts can be determined from the above submissions made by the parties and the documents provided by appellant II:

- initially, EPO Form 2339 was signed by *all* members of the opposition division ("first version of EPO Form 2339");
- the first examiner noticed a mistake on the first version of EPO Form 2339, namely that the form erroneously referred to "Drawings, Figures 1-16" (instead of Figures 1-17);
- the first version of EPO Form 2339 was not notified to the parties;
- a corrected version of EPO Form 2339 was reprinted ("corrected version of EPO Form 2339");
- the corrected version of EPO Form 2339 was signed by the chairman and the first examiner;
- the second examiner was absent for a longer period of time and, for this reason, the second examiner's team manager signed the corrected version of EPO Form 2339 on the second examiner's behalf;
- the corrected version of EPO Form 2339 was notified to the parties.

3. From these uncontested facts, the board draws the following conclusions.

3.1 The first version of EPO Form 2339 was correctly signed by *all* members of the opposition division but was not notified to the parties. Such a notification is, however, required pursuant to Rule 111(1), second sentence, EPC. Without its notification to the parties,

the "decision" does not come into existence and can also not be appealed.

In the present case, the first version of EPO Form 2339 was not notified to the parties and thus remained in the paper file, and this was done for good reasons since it contained an incorrect reference to the documents on which the opposed patent was to be maintained.

3.2 The object of the present appeals is only the opposition division's decision that was eventually notified to all parties and which included the corrected version of EPO Form 2339. It remains therefore the case, as already set out in point 1.5 above, that there is no guarantee that the reasons given in the written decision accurately reflect the majority point of view of *all* members who have taken part in the first-instance oral proceedings.

3.3 The fact that there is an explanation on file why this person signed the form on behalf of the second examiner does not change this finding. Such an explanation might suffice in a situation where one of the other members of the division signs on behalf of the incapacitated member (see point 1.4 above) but not in the situation of the present case. In other words, the explanation provided by appellants I and II might be a valid reason why the appealed decision was not signed by the second member but not why the decision was signed by a person who is not a member of the division. There is no provision in the EPC allowing a written decision to be signed by a person who is not a member of the competent deciding body.

3.4 Therefore, the board holds that there was a contravention of Rule 113(1) EPC which constitutes a substantial procedural violation. Consequently, the appealed decision is to be set aside.

3.5 In addition, the nature of the fundamental deficiency justifies an immediate remittal of the case to the opposition division under Article 111(1) EPC and Article 11 RPBA 2020, i.e. without entering into the merits of the case and the reimbursement of the appeal fee in full for all the appellants is justified pursuant to Rule 103(1)(a) EPC.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division for further prosecution.
3. The appeal fees are reimbursed.

The Registrar:

The Chair:



B. Brückner

K. Bengi-Akyürek

Decision electronically authenticated