



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1133]

Certain Unmanned Aerial Vehicles and Components Thereof

Final Determination Finding a Violation of Section 337 and Issuance of Remedial Orders; Suspension of Enforcement of the Remedial Orders Pending Final Resolution of a Final Written Decision by the Patent Trial and Appeal Board; and Termination of the Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (the “Commission”) has determined that: (i) the respondents have violated Section 337 of the Tariff Act of 1930, as amended, by importing, selling for importation, or selling in the United States after importation certain unmanned aerial vehicles (“UAVs”) that infringe complainant’s U.S. Patent No. 9,260,184 (“the ’184 patent”); (2) the respondents’ redesigned rotor locking assemblies were not ripe for adjudication in this investigation; (3) the appropriate remedies are a limited exclusion order and cease and desist orders; and (4) enforcement of said remedial orders will be suspended pending final resolution of a Final Written Decision by the Patent and Trademark Office (“PTAB”) that the asserted claims of the ’184 patent are unpatentable. This investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Carl P. Bretscher, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2382. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket system (“EDIS”) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General

information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on October 2, 2018, based on a complaint filed by Autel Robotics USA, Inc. ("Autel") of Bothell, Washington. 83 FR 49575-76 (Oct. 2, 2018). The complaint accuses respondents of violating 19 U.S.C. 1337 of the Tariff Act of 1930, as amended ("Section 337") by importing into the United States, selling for importation, or selling in the United States after importation certain unmanned aerial vehicles and components thereof that infringe the asserted claims of the '184 patent as well as of U.S. Patent Nos. 7,979,174 ("the '174 patent") and 10,044,013 ("the '013 patent"). *Id.* The complaint also alleges the existence of a domestic industry. *Id.*

The notice of investigation named the following respondents: SZ DJI Technology Co. Ltd. of Shenzhen, China; DJI Europe B.V. of Barendrecht, Netherlands; DJI Technology Inc. of Burbank, California; iFlight Technology Co., Ltd. ("iFlight") of Hong Kong; DJI Baiwang Technology Co. Ltd. of Shenzhen, China; DJI Research LLC of Palo Alto, California; DJI Service LLC ("DJI Service") of Cerritos, California; and DJI Creative Studio LLC of Burbank, California (collectively, "DJI"). *Id.* The Office of Unfair Import Investigations is not a party to this investigation. *Id.*

On September 13, 2019, the presiding Administrative Law Judge ("ALJ") issued Order No. 21, granting in part Autel's motion to strike evidence and expert opinions relating to DJI's "new designs" for rotor and battery locking mechanisms that DJI allegedly disclosed after the close of discovery. Order No. 21 at 2-4 (Sept. 13, 2019).

On October 17, 2019, the Commission determined not to review Order No. 22, which partially terminated the investigation with respect to certain patent claims withdrawn by Autel. Order No. 22 (Sept. 30, 2019), *unreviewed by Comm'n Notice* (Oct. 17, 2019). The claims that remained at issue are claims 1, 2, and 5 of the '184 patent; claims 1, 7, 8, 14, and 17 of the '174 patent; and claims 1, 3-5, 8, 10, 13-16, 18, 22, or 23 of the '013 patent.

The ALJ held an evidentiary hearing on October 21-23, 2019. At the start of that hearing, the ALJ announced that DJI's new designs are not part of this investigation.

On March 2, 2020, the ALJ issued a combined Initial Determination on Violation of Section 337 ("ID") and Recommended Determination ("RD") on Remedy and Bonding, finding a violation of Section 337 by way of infringement of the '184 patent but no violation with respect to the '174 or '013 patents. On March 9, 2020, the ALJ issued an errata, which corrects a misstatement in the original ID regarding the '174 patent but does not change the ID's findings on infringement or violation. *See Notice of Errata to Final Initial Determination* (Mar. 9, 2020).

On March 16, 2020, the parties filed petitions for review of certain findings in the final ID, pursuant to Commission Rule 210.43(a) (19 CFR 210.43(a)). The parties filed their respective responses on March 24, 2020, pursuant to Commission Rule 210.43(c) (19 CFR 210.43(c)).

On May 15, 2020, the Commission issued a notice soliciting public comments on the public interest factors, if any, that may be implicated if a remedy were to be issued in this investigation. 85 FR 30735 (May 20, 2020). The Commission did not receive any comments in response to its notice.

On May 29, 2020, while the petitions for review were still pending before the Commission, respondents' counsel filed a letter with the Commission attaching four recent Final

Written Decisions by the Patent Trial and Appeal Board (“PTAB”) of the U.S. Patent and Trademark Office, in which the PTAB found the challenged claims of the ’184, ’174, and ’013 patents, including the claims asserted in this investigation, to be unpatentable. *See SZ DJI Technology Co. v. Autel Robotics USA LLC*, Case IPR2019-00343, Final Written Decision Finding All Challenged Claims Unpatentable (PTAB May 21, 2020) (regarding ’184 patent); *SZ DJI Technology Co. v. Autel Robotics USA LLC*, Case IPR2019-00250, Final Written Decision Finding All Challenged Claims Unpatentable (PTAB May 13, 2020) (regarding ’174 patent); *SZ DJI Technology Co. v. Autel Robotics USA LLC*, Case IPR2019-00249, Final Written Decision Finding All Challenged Claims Unpatentable (PTAB May 13, 2020) (regarding ’174 patent); *SZ DJI Technology Co. v. Autel Robotics USA LLC*, Case IPR2019-00016, Final Written Decision Finding All Challenged Claims Unpatentable (PTAB May 14, 2020) (regarding ’013 patent).

On June 8, 2020, the Commission issued a notice stating that it determined to partially review the ID with respect to infringement of the ’184 patent, whether DJI’s new rotor locking assemblies should be adjudicated as part of this investigation, and the impact on this investigation, if any, of the PTAB’s Final Written Decision finding the challenged claims of the ’184 patent unpatentable. Comm’n Notice at 2-3 (June 9, 2020). The Commission determined not to review the ID’s findings that the asserted claims of the ’184 patent are not invalid, the domestic industry requirement is satisfied, and there is no violation of Section 337 with respect to either the ’174 or ’013 patents. *Id.* The Commission asked the parties to brief several questions regarding: (i) the impact, if any, of the PTAB’s Final Written Decision finding that asserted claims of the ’184 patent, among others, are unpatentable; (ii) whether DJI’s new rotor locking designs should be adjudicated as part of this investigation; and (iii) whether DJI’s Phantom 4 Pro and Inspire UAVs infringe the asserted claims of the ’184 patent. *Id.* at 3-4. The

Commission also asked the parties for briefing on remedy, bonding, and the public interest and extended the target date for completion of this investigation to August 10, 2020. *Id.* at 4-5. The target date was further extended to August 20, 2020. Comm'n Notice (August 10, 2020).

The parties filed their initial responses to the Commission's review questions on June 24, 2020, and their respective reply briefs on July 1, 2020.

Having considered the parties' submissions, the ID, and the record in this investigation, the Commission has determined that DJI has violated Section 337 by importing into the United States, selling for importation, or selling in the United States after importation certain unmanned aerial vehicles and components thereof that infringe claims 1 and 2 of the '184 patent. In particular, the parties did not petition for review of the ID's findings that DJI's Mavic Pro, Mavic Air, and Spark UAVs infringe claim 1 of the '184 patent. The Commission has determined that those UAVs also infringe claim 2 and that DJI's Phantom 4 Pro UAV infringes both claims 1 and 2. The Commission further determines that DJI's Inspire UAV does not infringe either claim 1 or 2 of the '184 patent. The Commission also affirms the ALJ's decision not to adjudicate DJI's new rotor locking designs in the present investigation.

The Commission has determined that the appropriate remedy is: (a) a limited exclusion order prohibiting the importation of certain unmanned aerial vehicles and components thereof that are covered by claims 1 or 2 of the '184 patent; and (b) cease and desist orders against respondents iFlight and DJI Service. The Commission has determined that the public interest factors enumerated in Section 337(d)(1) and (f)(1) do not preclude issuance of the limited exclusion order or cease and desist orders. The Commission has also determined to set a bond in the amount of 11.5 percent of the entered value of the excluded products imported during the period of Presidential review (19 U.S.C. 1337(j)).

The Commission has also determined to suspend enforcement of the limited exclusion order, cease and desist orders, and bond provision pending final resolution of the PTAB's Final Written Decision regarding the '184 patent. *See* 35 U.S.C. 318(b); *SZ DJI Technology Co. v. Autel Robotics USA, LLC*, IPR2019-00343, Patent 9,260,184, Final Written Decision Determining All Challenged Claims Unpatentable (May 21, 2020).

The Commission's orders and opinion were delivered to the President and United States Trade Representative on the day of their issuance.

The Commission voted to approve these determinations on August 20, 2020. This investigation is hereby terminated.

The authority for the Commission's determination is contained in Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Lisa Barton,
Secretary to the Commission.

Issued: August 20, 2020.

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