

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

**In the Matter of**

**CERTAIN UNMANNED AERIAL VEHICLES  
AND COMPONENTS THEREOF**

**Investigation No. 337-TA-1133**

**NOTICE OF A COMMISSION DETERMINATION TO DENY WITHOUT PREJUDICE  
RESPONDENTS' PETITION FOR MODIFICATION OF THE REMEDIAL ORDERS**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission (the "Commission") has determined to deny without prejudice the Respondents' Petition for Modification of the Limited Exclusion Order and Cease and Desist Orders ("Petition").

**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](mailto: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 ("UAVs") and components thereof that infringe one or more of the asserted claims of U.S. Patent Nos. 9,260,184 ("the '184 patent"); 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 allegedly new designs for rotor and battery locking mechanisms that DJI disclosed after the close of discovery. Order No. 21 at 2-4 (Sept. 13, 2019).

The ALJ held an evidentiary hearing on October 21-23, 2019. At the start of that hearing, the ALJ announced that DJI’s new locking 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 16, 2020, the parties filed petitions for review of certain findings in the ID, pursuant to Commission Rule 210.43(a) (19 CFR 210.43(a)). The parties filed their respective responses to the opposing petitions on March 24, 2020, pursuant to Commission Rule 210.43(c) (19 CFR 210.43(c)).

On May 29, 2020, while the parties’ 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, the ALJ’s decision to exclude DJI’s allegedly new rotor locking designs from this investigation,<sup>1</sup> and the impact, if any, of the PTAB’s Final Written Decision finding the ’184 patent claims unpatentable. Comm’n Notice at 2-3 (June 9, 2020). The Commission determined not to review the ID’s findings that: 1) there is no violation of Section 337 with respect to either the ’174 or ’013 patents; 2) the asserted claims of the ’184 patent are not invalid; and 3) the domestic industry requirement is satisfied. *Id.* The Commission asked the parties to brief several questions regarding the issues under review as well as remedy, bonding, and the public interest. *Id.* at 4-5.

On August 20, 2020, the Commission determined that DJI violated Section 337 by importing into the United States, selling for importation, or selling in the United States after importation certain UAVs and components thereof (with the exception of DJI’s Inspire UAVs) that infringe claims 1 and 2 of the ’184 patent. Comm’n Notice at 3 (Aug. 20, 2020) (“Comm’n

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<sup>1</sup> DJI’s allegedly new battery locking designs are not covered by the ’184 patent and thus were not part of the review.

Notice”); Comm’n Op. at 8-21 (Aug. 20, 2020) (“Comm’n Op.”). The Commission affirmed the ALJ’s decision not to adjudicate DJI’s allegedly new rotor locking designs. Comm’n Notice at 3; Comm’n Op. at 21-26.

The Commission determined that the appropriate remedy is: (a) a limited exclusion order prohibiting the importation of UAVs 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 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 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)). *See* Comm’n Notice at 3; Comm’n Op. at 26-34.

The Commission, however, 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 Techn. Co. v. Autel Robotics USA, LLC*, IPR2019-00343, Patent 9,260,184, Final Written Decision Determining All Challenged Claims Unpatentable (May 21, 2020), *on appeal sub. nom., Autel Robotics USA LLC v. SZ DJI Technology Co.*, Appeal No. 20-1987 (Fed. Cir.) (“Appeal No. 20-1987”). *See* Comm’n Notice at 4; Comm’n Op. at 35-38.

On October 16, 2020, Autel filed a notice of appeal of the Commission’s determination to suspend enforcement of its remedial orders and its finding that DJI’s Inspire UAVs are not infringing. The U.S. Court of Appeals for the Federal Circuit (“Federal Circuit”) docketed Autel’s appeal on October 21, 2020, as *Autel Robotics USA, LLC v. ITC*, Appeal No. 21-1082 (“Appeal No. 21-1082”). On December 15, 2020, the Federal Circuit ordered that Appeal No. 21-1082 shall be considered a companion case to Appeal No. 20-1987.

On November 25, 2020, DJI filed a notice of appeal of the Commission’s determination that certain UAVs infringe the asserted claims of the ’184 patent and that the asserted claims are not invalid over certain alleged prior art. The Federal Circuit docketed DJI’s appeal on December 3, 2020 as *SZ DJI Technology Co. Ltd. v. ITC*, Appeal No. 21-1363 (“Appeal No. 21-1363”). On December 16, 2020, the Federal Circuit consolidated Appeal Nos. 21-1363 and 21-1082, with Appeal No. 21-1082 being designated the lead case. The appeals are still pending.

On December 4, 2020, DJI filed the subject petition to institute a modification proceeding to exempt its allegedly new, non-infringing rotors and rotor locking assemblies from the remedial orders issued in this investigation. Autel filed its opposition to DJI’s petition on December 17, 2020.

Upon consideration of DJI’s petition, Autel’s opposition, and the record, the Commission has determined to deny DJI’s petition for modification of the remedial orders. Given that the Commission has suspended its remedial orders pending resolution of the consolidated appeals before the Federal Circuit, the Commission finds that DJI’s petition is premature. DJI has not identified any change in law or fact that warrants modification of the remedial orders while they remain suspended and the relevant appeals, including Appeal No. 21-1082, are still pending. Such denial is without prejudice as to DJI’s ability to refile its petition for modification.

The Commission voted to approve these determinations on January 5, 2021.

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.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', written in a cursive style.

Lisa R. Barton  
Secretary to the Commission

Issued: January 5, 2021