

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 REVIEW THE FINAL INITIAL
DETERMINATION IN PART, TO SET THE SCHEDULE FOR FILING WRITTEN
SUBMISSIONS ON THE ISSUES UNDER REVIEW AND REMEDY, THE PUBLIC
INTEREST, AND BONDING, AND TO EXTEND THE TARGET DATE FOR
COMPLETION OF THE INVESTIGATION**

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: (1) review in part certain findings of the final initial determination (“ID”) that certain accused products do not infringe claims 1 or 2 of U.S. Patent No. 9,260,184 (“’184 patent”); (2) decline to review, and thereby adopt, the ID’s findings that there is no violation of Section 337 with respect to U.S. Patent Nos. 7,979,174 (“the ’174 patent”) and 10,044,013 (“the ’013 patent”); (3) review whether to adjudicate products containing respondents’ allegedly redesigned rotor locking mechanisms; (4) solicit briefing regarding the issues under review and remedy, the public interest, and bonding; and (5) extend the target date for completing this investigation to August 10, 2020.

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 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 the asserted claims of Autel’s ’184, ’174, and ’013 patents. *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. of Hong Kong; DJI Baiwang Technology Co. Ltd. of Shenzhen, China; DJI Research LLC of Palo Alto, California; DJI Service LLC 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 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), *not rev'd*, Comm’n Notice (Oct. 17, 2019). The claims still 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 presiding Chief Administrative Law Judge (“CALJ”) held an evidentiary hearing on October 21-23, 2019. On March 2, 2020, the CALJ issued a final ID, finding a violation of Section 337 by way of infringement of the ’184 patent but not the ’174 or ’013 patents. On March 9, 2020, the CALJ 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 Commission determined to extend the target date for completion of this investigation to June 9, 2020. Comm’n Notice (Mar. 16, 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)). On March 24, 2020, the parties filed their respective petition responses, 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. Comm’n Notice (May 15, 2020); 85 FR 30735 (May 20, 2020). The Commission did not receive any comments from the public in response to its notice.

On May 29, 2020, counsel for DJI filed a letter with the Commission conveying four recent final written decisions by the Patent Trial and Appeal Board (“PTAB”), in which the PTAB invalidated certain challenged claims of the ’184, ’174, and ’013 patents, including the claims asserted in this investigation.

Having reviewed the record in this investigation, including the final ID, the parties’ petitions, and responses thereto, the Commission has determined to adopt certain findings and review other findings in the final ID, as follows:

- (1) With regard to the ’184 patent, the Commission has determined to review the ID’s findings of infringement with respect to claims 1 and 2 but not claim 5. The Commission has determined not to review, and thereby adopts, the ID’s findings that: (a) Respondents have satisfied both the technical and economic prongs of the domestic industry requirement; and (b) claims 1 and 2 are not invalid as anticipated or obvious.

- (2) The Commission has determined not to review, and thereby adopts, the ID's finding that there is no violation of Section 337 with respect to the '174 patent. .
- (3) The Commission has determined not to review, and thereby adopts, the ID's finding that there is no violation of Section 337 with respect to the '013 patent.
- (4) The Commission has determined to review the ID's decision not to adjudicate DJI's redesigned rotor locking mechanisms. The Commission has determined not to review the ID's decision not to adjudicate DJI's redesigned battery latching mechanisms, which implicates only the '013 patent.
- (5) The Commission has determined not to review the ID with respect to any allegedly inconsistent statements Autel made before the Patent Trial and Appeal Board.

The parties are asked to provide additional briefing on the following issues under review. For each argument presented, the parties' submissions should include whether and how that argument was presented and preserved in the proceedings before the CALJ, in conformity with the CALJ's Ground Rules (Order No. 2), with citations to the record.

- (A) Please discuss what, if any, effect the final written decision of the PTAB (attached to Respondents' letter to the Commission of March 29, 2020) finding the claims of the '184 patent unpatentable has on the Commission's present investigation with respect to the accused products and the '184 patent, including any impact on the issuance of relief.
- (B) Please discuss whether and to what extent the PTAB's final written decision impacts Respondents' request to adjudicate its redesigned rotor locking assemblies for a determination as to whether they infringe the '184 patent, including Respondents' request for a remand to the ALJ for further proceedings.
- (C) Please identify each redesigned product (or each redesigned component of a product) for which Respondents seek adjudication as to the '184 patent.
- (D) For each redesigned product (or each redesigned component of a product) for which Respondents seek adjudication as to the '184 patent, please identify the following information:
 - (i) what discovery was provided or took place and when in relation to the deadline for the close of fact discovery and expert discovery; and
 - (ii) whether and to what extent the discovery addresses whether each redesigned product or redesigned component: (a) has been imported; (b) is fixed in design; and (c) infringes the asserted claims of the '184 patent.
- (E) Regarding the Phantom 4 Pro and Inspire products, explain whether the structures on the rotors identified by Autel fall under the plain and ordinary meaning of "lugs," and whether the structures on the driveshaft fall under the plain and

ordinary meaning of “notches,” pursuant to claim 1 of the ’184 patent. Explain whether the so-called “notches” identified by Autel are “configured to engage” the so-called “lugs” to secure the rotors as required by claim 1, and if so, how.

- (F) Explain whether the Phantom 4 Pro’s and Inspire’s counterclockwise-rotating rotors have “lugs with a configuration that is different than the configuration of the lugs” on its clockwise-rotating rotors, as required by claim 2 of the ’184 patent.

The parties are requested to brief only the discrete issues identified above, with reference to the applicable law and evidentiary record. The parties are not to brief any other issues on review, which have already been adequately presented in the parties’ previous filings.

The Commission has also determined to extend the target date to August 10, 2020.

In connection with the final disposition of this investigation, the statute authorizes issuance of: (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease-and-desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm’n Op. at 7-10 (December 1994).

The statute requires the Commission to consider the effects of any remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and/or cease-and-desist order would have on: (1) the public health and welfare; (2) competitive conditions in the U.S. economy; (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation; and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission’s action. *See* Presidential Memorandum of July 21, 2005. 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: Parties to this investigation are requested to file written submissions on the issue identified above in this notice. In addition, the parties, interested government agencies, and any other interested parties are requested to file written submissions on the issues of remedy, the public interest, and bonding. Such initial submissions should

include views on the recommended determination by the CALJ on remedy and bonding. Explain whether your views on public interest or bonding would differ if the redesigned products (or redesigned components of a product) put forward by Respondents were excluded from any remedy.

In its initial submission, Complainant is requested to identify the remedy sought and to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the date that the '184 patent expires and the HTSUS subheadings under which the accused products are imported. Complainant is further requested to supply the names of known importers of the Respondents' products at issue in this investigation. Complainant is also requested to identify and explain, from the record, articles that it contends are "components of" the subject products, and thus potentially covered by the proposed remedial orders, if imported separately from the subject products. *See* 85 FR at 10725. Failure to provide this information may result in waiver of any remedy directed to "components of" the subject products, in the event any violation may be found.

The parties' written submissions and proposed remedial orders must be filed no later than the close of business on **June 24, 2020**. Reply submissions must be filed no later than the close of business on **July 1, 2020**. Opening submissions are limited to 40 pages. Reply submissions are limited to 35 pages. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 *Fed. Reg.* 15798 (Mar. 19, 2020). Submissions should refer to the investigation number ("Inv. No. 337-TA-1133") in a prominent place on the cover page and/or first page. (*See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The Commission voted to approve these determinations on June 9, 2020.

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', with a stylized flourish at the end.

Lisa R. Barton
Secretary to the Commission

Issued: June 9, 2020