

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN UNMANNED AERIAL VEHICLES
AND COMPONENTS THEREOF**

**Investigation No. 337-TA-1133
(Recission)**

**NOTICE OF A COMMISSION DETERMINATION TO INSTITUTE A RESCISSION
PROCEEDING AND RESCIND PERMANENTLY A LIMITED EXCLUSION ORDER
AND CEASE AND DESIST ORDERS; TERMINATION OF RESCISSION
PROCEEDING**

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 institute a rescission proceeding and rescind the remedial orders issued in the underlying investigation. This rescission proceeding is hereby 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 (“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 March 2, 2020, the presiding Chief Administrative Law Judge (“CALJ”) 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 patent or ’013 patent.

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, finding the challenged claims of the ’184, ’174, and ’013 patents, including the claims asserted in this investigation, to be unpatentable. *See, e.g., SZ DJI Technology Co. v. Autel Robotics USA LLC*, Case IPR2019-00343, Final Written Decision Finding All Challenged Claims Unpatentable (PTAB 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”).

On June 8, 2020, the Commission issued a notice stating that it had determined to partially review certain findings relating to the ’184 patent, including 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 there is no violation with respect to the ’174 patent or ’013 patent. *Id.*

On August 20, 2020, the Commission affirmed that DJI violated Section 337 by way of infringing claims 1 and 2 of the ’184 patent. Comm’n Notice at 3 (Aug. 20, 2020) (“Comm’n Notice”); Comm’n Op. at 8-21 (Aug. 20, 2020) (“Comm’n Op.”). Having found a violation of Section 337, 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; (b) cease and desist orders against respondents iFlight and DJI Service; and (c) 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 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. *Id.* 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* 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 final determination, including its determination to suspend enforcement of its remedial orders. *See Robotics USA, LLC v. ITC*, Appeal No. 21-1082 (“Appeal No. 21-1082”). On November 25, 2020, DJI filed a notice of a cross-appeal of the Commission’s final determination. *See SZ DJI Technology Co. Ltd. v. ITC*, Appeal No. 21-1363 (“Appeal No. 21-1363”). On December 16, 2020, the Federal Circuit consolidated the appeals, designating Appeal No. 21-1082 as the lead case.

On August 16, 2021, Autel and DJI filed a joint motion to voluntarily dismiss their appeal and cross-appeal. *See Autel Robotics USA LLC v. Int’l Trade Comm’n LLC*, Appeal Nos. 2021-1082, -1363, Joint Stipulation to Dismiss Appeals (Aug. 16, 2021). The Federal Circuit

granted the motion and dismissed the appeals the following day. *See Autel Robotics USA LLC v. Int'l Trade Comm'n*, Appeal Nos. 21-1082, -1363, Order (Fed. Cir. Aug. 17, 2021).

On August 16, 2021, Autel and DJI filed a Joint Petition to Rescind the Limited Exclusion Order and Cease and Desist Orders (“Joint Petition”) that the Commission issued in this investigation, pursuant to 19 U.S.C. § 1337(k) and Commission Rule 210.76(a) (19 C.F.R. § 210.76(a)). The parties filed both confidential and public versions of the settlement agreements.

Upon consideration of the parties’ joint petition, the Commission has determined that the petition complies with Commission rules, *see* 19 CFR 210.76(a)(3), and that there are no extraordinary reasons to deny rescission of the remedial orders. Accordingly, the Commission has determined to institute a rescission proceeding and to permanently rescind the LEO and the CDOs. This rescission proceeding is hereby terminated.

The Commission voted to approve these determinations on September 10, 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', enclosed within a large, loopy oval flourish.

Lisa R. Barton
Secretary to the Commission

Issued: September 10, 2021