

337-1007/1021 案——由赛格威、德卡和纳恩博发起的 337 调查

平衡车案例信息第十三期（总第十九期）

2016 年 5 月 18 日，赛格威（Segway）、德卡（DEKA）和纳恩博（Ninebot）向美国国际贸易委员会（USITC）提交 337 调查申请书，指控美国 6 家平衡车企业的平衡车产品、组件、包装及手册侵犯了其在美国的 6 项发明专利和 2 项商标。2016 年 6 月 20 日，ITC 进行立案调查，案号为“337-1007”。

此次调查的被告中虽没有中国企业，但由于平衡车产业链几乎都在中国，一旦发布普遍排除令，中国的平衡车企业也会受到重大打击。骑客（Chic）在第一时间做出反应，与原告进行了沟通，主动申请加入这次 337 调查的被告名单中。但原告要求增加被告的动议被 ITC 否决，原因是缺乏正当理由（failed to show good cause）。2016 年 8 月 16 日，赛格威、德卡和纳恩博再次向 ITC 提出 337 调查申请，指控包括骑客在内的 4 个国家 13 家企业的平衡车产品、组件、包装及手册侵犯了其在美国的 2 项发明专利。2016 年 9 月 15 日，ITC 进行立案调查，案号为“337-1021”。2016 年 9 月，ITC 在原告请求下将这两件 337 调查合并。

值得注意的是，本次 337 调查的原告是赛格威、德卡和纳恩博。在 2015 年 4 月之前，德卡是赛格威的母公司，这两家公司曾对包括纳恩博在内的中国企业提起 337 调查（案号为 337-935）；2015 年，纳恩博收购了赛格威；到 2016 年，纳恩博与这两家公司联手提起 337 调查，这是第一起由中国企业提起的平衡车相关的 337 调查。

以下分别对 337-1007 和 337-1021 的提起情况作简要介绍。

一 337-1007 案提起情况

1 涉案专利

1007 案涉及 6 件美国发明专利。具体信息见下表：

表 1 337-1007 案涉案发明专利信息

序号	专利号	专利主题	授权日	涉及权利要求
1	US 6302230	Personal Mobility Vehicles and Methods 个人移动车辆和方法	2001.10.16	1, 3-5, 7
2	US 6651763	Transporter Oscillating Alarm 运输车摆动警报	2003.11.25	1-5, 7
3	US 7023330	Transporter Oscillating Alarm 运输车摆动警报	2006.4.4	1-3, 5
4	US 7275607	Control of a Personal Transporter Based on User Position 基于用户位置的个人运输车的控制	2007.10.2	1-4, 6

5	US 7479872	Transporter Oscillating Alarm 运输车摆动警报	2009.1.20	1, 3-5, 10-12, 17
6	US 9188984	Control of a Personal Transporter Based on User Position 基于用户位置的个人运输车的控制	2015.11.17	1-3, 5-7, 8-14, 15-20

1007 案还涉及 2 件商标，具体信息见下表：

表 2 337-1007 案涉案商标信息

商标信息	状态	商品/服务名称
SEGWAY 申请号：76313604 注册号：2727948	注册日：2003.6.17 续展日：2013.6.17 首次使用： 2001.12.3	（国际分类第 12 类） Motorized, self-propelled, wheeled personal mobility devices, namely, [wheelchairs], scooters, utility carts, and chariots 机动、自走式、轮式个人移动设备，即[轮椅]，滑板车，实用工具车和战车
SEGWAY 申请号：76342141 注册号：2769942	注册日：2003.9.30 续展日：2013.9.30 首次使用： 2001.12.3	（国际分类第 12 类） Motorized, self-propelled, wheeled personal mobility devices, namely, [wheelchairs], scooters, utility carts, and chariots 机动、自走式、轮式个人移动设备，即[轮椅]，滑板车，实用工具车和战车

2 涉案被控公司

337-1007 案中涉案企业为 6 家美国企业，其中包括曾提起另一起 337 调查（案号 337-1000）的锐哲（Razor）和英凡蒂（Inventist），还包括名称与赛格威（Segway）相似的 Swagway 和 Segaway。

表 3 1007 案涉案企业及被控侵权情况

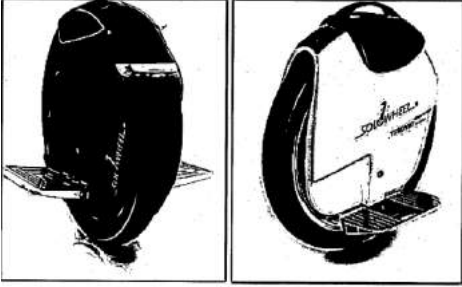

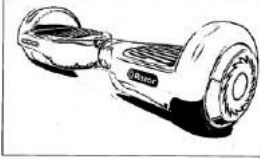


序号	涉案侵权公司	被控侵权情况						Segway Marks
		' 230	' 763	' 330	' 607	' 872	' 984	
1	Inventist, Inc.	√	√	√	√	√	√	--
2	Razor USA LLC	√	√	√	√	√	√	--
3	Phunkee Duck, Inc.	√	--	--	√	--	√	--


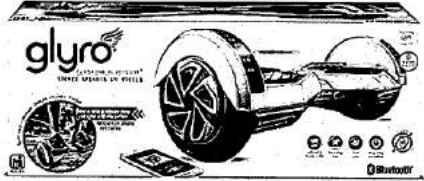
4	Swagway, LLC	√	--	--	√	--	√	√
5	Segaway	√	--	--	√	--	√	√
6	Jetson Electric Bikes LLC	√	--	--	√	--	√	--

3 涉案被控公司的相关产品

原告在诉状中控告被告向美国进口、为向美国进口而销售或进口后在美国境内销售涉案侵权产品，涉案侵权产品主要是独轮车和扭扭车。

表 4 1007 案被控侵权产品详情

序号	被控侵权公司	产品型号	产品图示
1	Inventist	Solowheel: Classic and Xtreme.	 Solowheel Classic Solowheel Xtreme
		Hovertrax	
2	Razor	Hovertrax	
3	Phunkee Duck	PhunkeeDuck	
4	Swagway	Swagway	

5	Segaway	Segaway	
6	Jetson	Jetson	

4 起诉方提出的救济措施

起诉方请求 USITC 签发普遍排除令、有限排除令和禁止令，并在总统审查期内对一些被诉侵权产品收取保证金。原文如下：

XII. REQUEST FOR RELIEF

WHEREFORE, Segway respectfully requests that the United States International Trade Commission:

A. Institute an immediate investigation pursuant to Section 337(b)(1) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, into the violation by Respondents of Section 337 arising from the importation into the United States, sale for importation into the United States, and/or sale within the United States after importation of Respondents' personal transporters, components thereof, and packaging and manuals therefor that infringe the Asserted Patents and/or Segway Marks;

B. Schedule and conduct a hearing pursuant to Section 337(c), for purposes of receiving evidence and hearing argument concerning whether there has been a violation of Section 337 and, following the hearing, determine that there has been a violation of Section 337;

C. Issue a **general exclusion order** pursuant to 19 U.S.C. § 1337(d)(2), barring from entry into the United States any personal transporters, components thereof, and packaging and manuals therefor that infringe the Asserted Patents and Segway Marks;

D. Issue a **limited exclusion order**, pursuant to 19 U.S.C. § 1337(d)(1), barring from entry into the United States Respondents' Accused Products, including personal transporters, components thereof, and packaging and manuals therefor that infringe the Asserted Patents and Segway Marks;

E. Issue **permanent cease and desist orders**, pursuant 19 U.S.C. § 1337(f), directing Respondents to cease and desist from selling for importation into the United States, importing

into the United States, selling after importation into the United States, offering for sale, marketing, advertising, demonstrating, sampling, warehousing inventory for distribution, distributing, licensing, testing, providing technical support, use, or other related commercial activity involving Respondents' personal transporters, components thereof, and packaging and manuals therefor that infringe the Asserted Patents and Segway Marks;

F. **Impose a bond** upon importation of certain infringing personal transporters, components thereof, and packaging and manuals therefor during the 60-day Presidential review period pursuant to 19 U.S.C. § 1337(j); and

G. Grant all such other and further relief as it deems appropriate under the law, based upon the facts complained of herein and as determined by the investigation.

二 337-1021 案提起情况

1 涉案专利

1021 案涉及 2 件美国发明专利：US 6302230 和 US 7275607。这两件发明专利同时也是 1007 案的涉案专利，但涉及 US 6302230 的权利要求不同。具体详情见下表：

表 5 337-1021 案涉案专利

序号	专利号	专利主题	授权日	涉及权利要求
1	US 6302230	Personal Mobility Vehicles and Methods 个人移动车辆和方法	2001.10.16	1, 3-4
2	US 7275607	Control of a Personal Transporter Based on User Position 基于用户位置的个人运输车的控制	2007.10.2	1-4, 6

2 涉案被控公司

1021 案中的 13 家被控企业包括 6 家中国企业、1 家荷兰企业、4 家美国企业和 2 家土耳其企业。

表 6 1021 案涉案企业及被控侵权情况

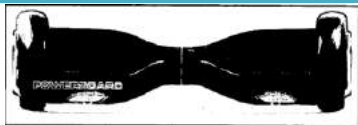
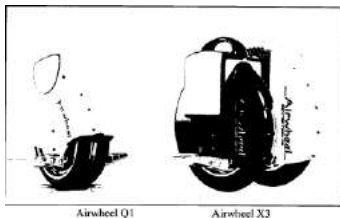

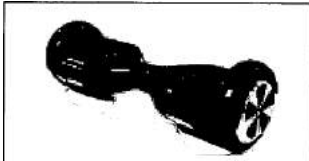
序号	涉案侵权公司	被控公司所在国家	被控侵权情况	
			' 230	' 607
1	Powerboard	美国	√	√
2	Airwheel	Metem Teknoloji Sistemleri San	√	√
3		Metem Teknoloji Sistemleri San(2)	√	√






4		Changzhou Airwheel Technology Co., Ltd	中国	√	√
5		Airwheel(USA)	美国	√	√
6		Airwheel	荷兰	√	√
7	Fastwheel		中国	√	√
8	Shenzhen Chenduoxing Electronic Technology Ltd.		中国	√	√
9	Shenzhen Chenduoxing Electronic Technology Ltd., China, a.k.a C-Star		中国	√	√
10	Hovershop		美国	√	√
11	Shenzhen Jomo Technology Co., Ltd., a.k.a. Koowheel		中国	√	√
12	Guangzhou Kebye Electronic Technology Co., Ltd., a.k.a. Gotway		中国	√	√
13	Inventist, Inc.		美国	--	√

3 涉案被控公司的相关产品

起诉人在诉状中指出，被告企业为进口到美国而销售、向美国进口或进口后在美国境内销售涉案侵权产品，涉案产品是独轮车和扭扭车。

表 7 1021 案被控侵权产品详情

序号	涉案被控公司	产品型号	产品图示
1	Powerboard	Powerboard /Powerboard by Hoverboard	
2	Airwheel	Mars Rover, Airwheel X3, Airwheel X8, Airwheel Q1, Airwheel Q5	
3	Fastwheel	Eva and Ring	
4	Chic	4WRD-Smart	

5	Hovershop	hoverboard	
6	C-Star	C-Star, Alucard	
7	Koowheel	Koowheel	
8	Gotway	Gotway	
9	Inventist	Solowheel: Classic and Xtreme	

4 起诉方提出的救济措施

起诉方请求 USITC 签发普遍排除令、有限排除令和禁止令，并在总统审查期内对一些被诉侵权产品收取保证金。原文如下：

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C. Issue a **general exclusion order** pursuant to 19 U.S.C. § 1337(d)(2), barring from entry into the United States any personal transporters, components thereof, and packaging and manuals therefor that infringe the Asserted Patents;

D. Issue a **limited exclusion order**, pursuant to 19 U.S.C. § 1337(d)(1), barring from entry into the United States Respondents' Accused Products, including personal transporters, components thereof, and packaging and manuals therefor that infringe the Asserted Patents;

E. Issue **permanent cease and desist orders**, pursuant 19 U.S.C. § 1337(f), directing Respondents to cease and desist from selling for importation into the United States, importing into the United States, selling after importation into the United States, offering for sale, marketing, advertising, demonstrating, sampling, warehousing inventory for distribution, distributing, licensing, testing, providing technical support, use, or other related commercial activity involving Respondents' personal transporters, components thereof, and packaging and manuals therefor that infringe the Asserted Patents;

F. **Impose a bond** upon importation of certain infringing personal transporters, components thereof, and packaging and manuals therefor during the 60-day Presidential review period pursuant to 19 U.S.C. § 1337(j); and

G. Grant all such other and further relief as it deems appropriate under the law, based upon the facts complained of herein and as determined by the investigation.

以上是对 337-1007/1021 两案的基本情况做的简要概括。美国国际贸易委员会于 2017 年 12 月 11 日，对上述该两案做出了裁定，我们将在下期推送中，与大家一起赏析。

值 2018 新年来临之际，感谢大家一直以来对智专知识产权的关心与支持，恭祝大家：
新年快乐，身体健康，工作顺利！

参考文献

- [1] znphc 天河. Ninebot 针对中国平衡车企业申请启动 337 调查.
<http://www.znphc.com/201608/4527.html>, 2016-08-18/2017-12-26.

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