

Morgan Lewis

AUTOMOTIVE

Q2 / 2016

This is the eighth issue of our newsletter on developments in the automotive industry published by Morgan Lewis's automotive practice, adding contributions from around the globe by leveraging the experience of the lawyers in our 28 offices. We counsel our automotive clients on a broad range of industry-specific issues, including matters relating to mergers and acquisitions (M&A), antitrust, litigation, regulatory concerns, intellectual property, and labor and employment.

This issue of *Morgan Lewis AUTOMOTIVE*, which covers the second quarter of 2016, touches on issues relating to the connected car, autonomous vehicles, and other developments in the global automotive markets. The latest issues of *Morgan Lewis AUTOMOTIVE* are available at morganlewis.com.

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M&A Developments: Nissan's decision to become the largest shareholder of Mitsubishi Motors; Freudenberg's acquisition of full control of Vibracoustic; BASF's acquisition of Chemetall; Midea's bid for Germany's industrial robots supplier Kuka; Valeo's acquisition of FTE Automotive; KKR's proposed investment in Takata; 3i Group's acquisition of Schlemmer; MAN Truck & Bus's investment in FR8 Revolution; and Mann+Hummel's acquisition of Affinia.

Antitrust Developments: The United States imposes fines on Corning International KK Tokay Kogyo and Maruyasu Industries for fixing the prices for components; Hitachi Chemical to plead guilty to fixing capacitor prices; German Federal Supreme Court clarifies rules regarding access to an authorized repair shop network.

Regulatory Developments: The United States sets new rules for compliance of rental car agencies for safety related recalls; Germany clears regulatory hurdles regarding automated vehicles and investigates diesel cars for compliance with NOx standards; Google, Uber, Lyft, Ford, and Volvo form a lobbying group; CEO of Suzuki Motors resigns over fuel economy scandal.

IP Developments: Enactment of the Defend Trade Secrets Act (DTSA) in the United States with positive aftermath for automotive companies; announcement of new vehicle cybersecurity products; several auto companies participate in large patent purchase program; the Thomson Reuters's 2016 state of Innovation Report documents, that automotive innovation remains robust.



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For further information, or if you would like to discuss the implications of these legal developments, please do not hesitate to get in touch with your usual contact at Morgan Lewis.

M&A DEVELOPMENTS

Nissan to become Mitsubishi's largest shareholder

Nissan, which is in a partnership with Renault, has signed an agreement to become the largest shareholder of Mitsubishi Motors. Under the agreement, Nissan will inject \$2.2 billion into Mitsubishi by buying newly issued shares that will amount to a 34 percent stake. Nissan also will receive the right to nominate the chairman of Mitsubishi's board and one-third of its directors. The value of Mitsubishi's shares has dropped significantly since the company has admitted that a number of its cars did not meet claimed fuel efficiency standards.

Freudenberg to acquire full control in Vibracoustic

German technology group Freudenberg will acquire sole control in Trelleborg Vibracoustic, recently renamed Vibracoustic GmbH, a global supplier of vibration control components for the automotive industry. Vibracoustic was established in 2012 as a 50-50 joint venture between Freudenberg and Swedish Trelleborg. Vibracoustic has about 9,000 employees and earned close to €2 billion in 2015. Freudenberg and Trelleborg abandoned their original plan to sell Vibracoustic via an IPO.

BASF to acquire Chemetall from Albemarle

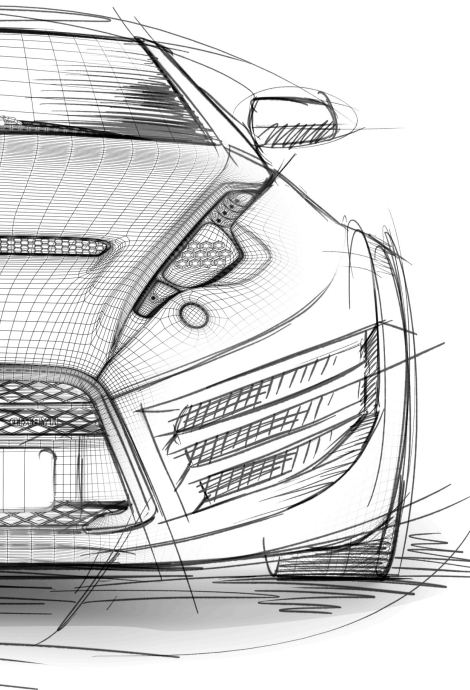
BASF announced its acquisition of Chemetall, a leading global surface treatment business for the auto and aerospace industry. Chemetall has 2,500 employees in 21 production sites and earned \$845 million in 2015. BASF stated that Chemetall will complement its automotive paints and coatings division. The transaction is subject to merger control approval and is expected to close at the end of the year. Morgan Lewis advised BASF.

Car-booking apps raise significant financial resources

According to media reports, car-booking apps have been able to raise significant financial resources from investors and lenders. Israel-based Gett is said to have raised \$300 million from Volkswagen. Uber is reported to have raised \$3.5 billion from Saudi Arabia's sovereign wealth fund and is said to be in talks with lenders for leveraged loans in the amount of \$2 billion. Didi Chuxing, the Chinese car-booking app, is reported to have raised \$4.5 billion from investors and an additional \$2.8 billion from lenders. Last quarter, General Motors invested \$500 million in Lyft.

China's Midea submits voluntary takeover offer for German Kuka

China's Midea Group, a home appliance maker, submitted a voluntary takeover offer for Germany's Kuka AG, a supplier of industrial robots used in the automotive and other industries. Midea stated that Kuka will continue to be listed in Germany. Various German and European lawmakers and industry representatives expressed concern with the transaction.



M&A DEVELOPMENTS

Valeo to acquire FTE Automotive from Bain Capital

Valeo, the French Tier-1 automotive supplier, acquired FTE Automotive, a global supplier of clutch and gear actuators systems for the automotive industry, from Bain Capital Private Equity. Bain Capital acquired FTE Automotive in 2013. FTE has 3,700 employees and had global sales of €500 million last year. Valeo said its acquisition of FTE will allow it to expand its offering of active actuation systems for transmissions, a strategic and fast-growing market driven by dual clutch technology and the growth of hybrid vehicles.

3i to acquire Schlemmer

3i Group, the British investment manager, will acquire Germany-based Schlemmer, together with Schlemmer's management. Headquartered near Munich, Schlemmer develops and produces cable protection for automotive and industrial applications. It employs 2,500 workers and generates gross sales of more than €200 million.

MAN Truck & Bus invests in logistics start-up

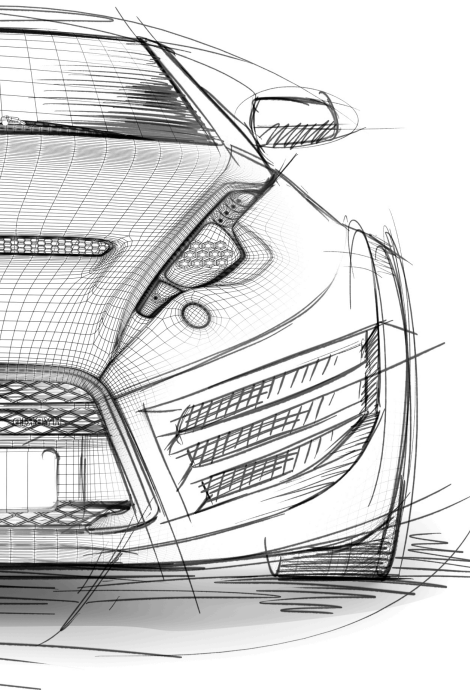
MAN Truck & Bus AG, part of the Volkswagen group, invested in Silicon Valley-based start-up FR8 Revolution. FR8 has developed a comprehensive operating system for a connected transportation industry that will provide shippers, carriers, and truck drivers with a uniform, transparent platform for planning cargoes based on real time data. FR8's system is designed to identify free loading capacities and to facilitate price comparison and communications between traders, fleet operators, freight brokers, and shippers.

German Mann + Hummel completes acquisition of Affinia

Mann + Hummel, a German manufacturer of filters for the automotive industry, completed its acquisition of Affinia Group, a US manufacturer of spare filters for oil, gas, hydraulic and cooling liquids. By means of this acquisition, Mann + Hummel will increase its workforce to 20,000 employees and will have worldwide sales of close to €4 billion.

KKR said to be interested in Takata investment

US private equity group KKR is reportedly interested in investing in Takata, the troubled Japanese airbag maker. Takata continues to face significant financial difficulties after US regulators determined that a number of the inflators installed in its airbags are unsafe. (See *Morgan Lewis Automotive* Q4/2015, page 5.) The US Department of Transportation's National Highway Traffic Safety Administration (NHTSA) recently announced that up to 40 million Takata-made inflators needed to be replaced in addition to 28.8 million airbags already under recall. Following the report that KKR wants to acquire a 60 percent stake in Takata, its shares rose 21 percent.



ANTITRUST DEVELOPMENTS

United States fines Corning International Kabushiki Kaisha

The US Department of Justice (DOJ) announced that Corning Inc.'s Japanese subsidiary Corning International Kabushiki Kaisha filed a plea agreement pursuant to which it will pay \$66.5 million and plead guilty to fixing prices for ceramic substrates used in vehicle emission control systems. The DOJ said the Japanese unit was involved in a price-fixing, bid-rigging, and market allocation conspiracy between July 1999 and July 2011. Shortly before the DOJ's announcement, former Corning International K.K. executive Nobuhiko Niwa was indicted on US antitrust charges. According to Corning Inc., Niwa successfully hid the violation from both the parent company and the subsidiary.

United States indicts Japanese companies, executives

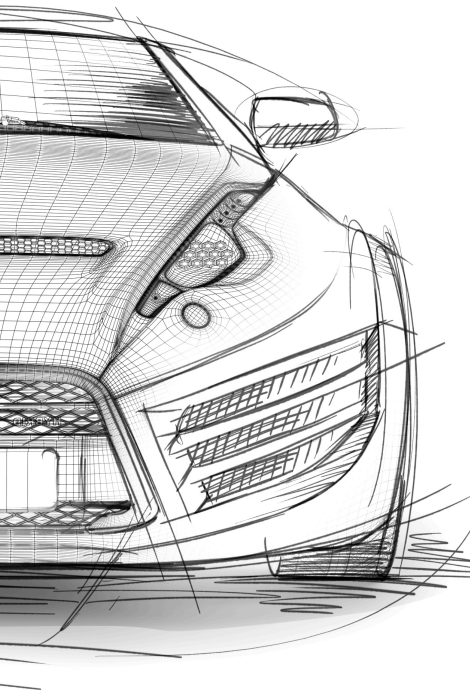
A US federal grand jury indicted two Japanese companies, their US subsidiaries, and five executives on bid-rigging charges. According to the DOJ, Tokai Kogyo Co. and its US subsidiary, Green Tokai, were involved in a conspiracy to fix prices and rig bids for the sale of auto-body sealing products to Honda Motor Company and some Honda affiliates. Akitada Tazumi, a former assistant general manager of Tokai Kogyo, was also charged in the alleged conspiracy. The DOJ claims Tokai Kogyo, Green Tokai, and Tazumi participated in the conspiracy between March 2008 and August 2011. In a separate indictment, a US federal grand jury said Maruyasu Industries and its US-based subsidiary Curtis-Maruyasu America participated in a conspiracy to fix prices, rig bids, and allocate customers in the market for automotive steel tubes. The indictment also targets four former Maruyasu executives. The alleged conspiracy occurred between December 2003 and July 2011.

Companies agree to plead guilty to fixing capacitor prices

NEC Tokin and Hitachi Chemical have agreed to plead guilty to conspiring with competitors between 2002 and 2010 to fix prices for electrolytic capacitors used in a variety of products, including car engine and airbag systems, televisions and computers, and home appliances, according to the DOJ. In addition to pleading guilty and to paying a fine, Hitachi Chemical has agreed to cooperate in the DOJ's ongoing investigation.

German court clarifies rules on access to authorized repair network

The German Federal Supreme Court clarified in a recently published decision the rules pursuant to which a repair shop can demand access to an original equipment manufacturer's (OEM's) network of authorized repair shops. According to the court, an OEM may have a dominant position in providing access to its network and thus the business of repairing and maintaining the cars of its brand if an independent repair shop would not be able to provide such services without being part of the network. The repair shop would still be able to claim dependency from the OEM if its business model is sufficiently focused on the OEM's brand, the court found.



REGULATORY DEVELOPMENTS

US sets new rules for rental car agencies

The NHTSA announced that rental car agencies must fix any and all open safety defects before renting vehicles to customers. The new federal law prohibits any company or dealer with fleets greater than 35 vehicles to rent unrepaired recalled vehicles. It also extends the NHTSA's authority to cover rental car companies and to investigate and punish violators. The new law was passed by Congress after two sisters died in a rental vehicle that was under a safety recall but had not been repaired.

Germany clears way for automated vehicles

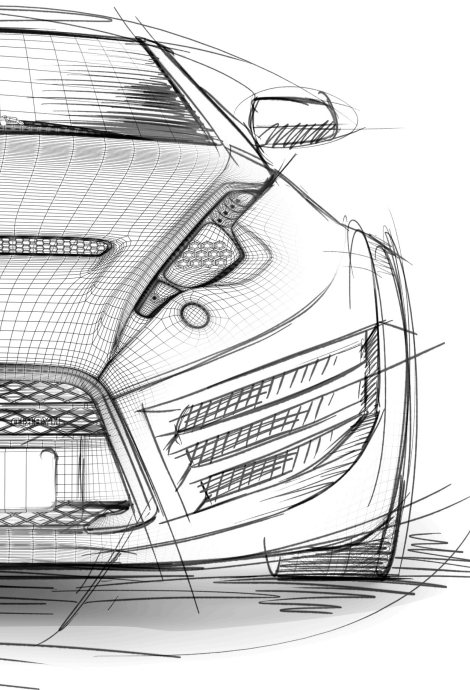
The German federal government adopted a bill on the amended Vienna Convention, an international treaty designed to facilitate international road traffic and to increase safety by establishing standard traffic rules among contracting parties. Once the new bill is passed by the German parliament, automated driving systems that comply with the technical UNECE Regulations and that can be overridden or switched off by a driver will be allowed. The German federal government further stated it is already lobbying for additional amendments of the Vienna Convention to expand the definition of "driver" to automated systems with full control over the vehicle.

Investigation of diesel cars for compliance with NOx standards

Germany published a report by the Volkswagen Investigation Commission that had retested a number of Volkswagen diesel cars as well as a number of cars by other high-volume German and non-German manufacturers for their compliance with emission standards. The commission's objective was to look for unlawful defeat devices like the one used by Volkswagen. A total of 56 tests were carried out on 53 different models both under lab conditions on the dynamometer and under real road conditions.

The report shows that a large variety of NOx emission values were measured in the laboratory and on the road; no other defeat device was found; and technical procedures were found that adapt the effectiveness of the emission control systems to driving/and or environmental conditions. The commission expressed doubts whether one of these procedures, the so-called "temperature window," which reduces exhaust gas recirculation, can be justified by the protection of the engine.

Fiat Chrysler Automotive refused to participate in a meeting with officials of Germany's department of transport to discuss the results for its cars arguing that under EU law only Italian authorities have jurisdiction to determine whether Fiat vehicles are compliant with EU exhaust emission standards.



REGULATORY DEVELOPMENTS

Google, Uber, Lyft, Ford, and Volvo form US lobbying group

Google, Uber, Lyft, Ford, and Volvo formed a coalition to encourage US federal legislation to facilitate the manufacture and distribution of self-driving cars. The group will work with lawmakers, regulators, and the public to realize the safety and social benefits of self-driving vehicles. A former top official of the NHTSA will be the group's counsel and spokesman.

Google also reported that it had formed an alliance with Fiat Chrysler to develop self-driving vehicles.

Court decides on car's compliance with data protection rules

A court of appeals in Hamm, Germany, ruled that the navigation system of a Land Rover Discovery does not permanently store the navigation data and does not allow for the possibility that such data of the car's driver could be accessed illegally by third parties. The court argued that the car would have to be considered faulty only if there were a risk that third parties could access navigation or other personal data of the car's driver gathered by the infotainment system.

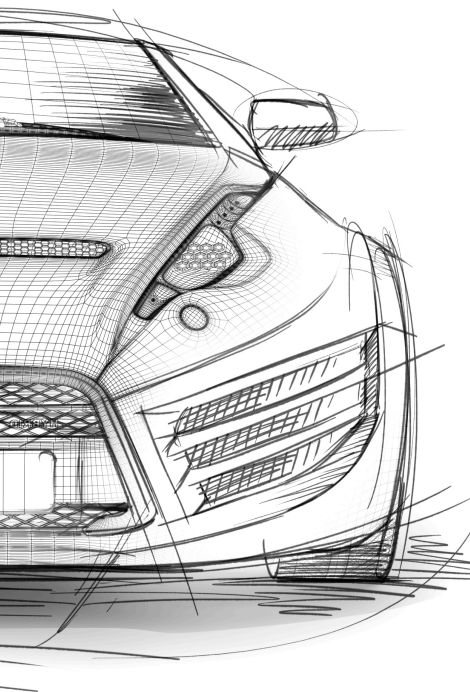
The decision came after Germany's leading association of motorists, ADAC, claimed that certain cars send navigation data every two minutes to the OEMs or store information on how drivers use cars. The affected OEMs maintain that their cars are in compliance with data protection rules.

Suzuki Motor's CEO to resign over fuel economy scandal

After leading Suzuki Motors for almost four decades, CEO Osamu Suzuki announced his resignation. Suzuki, who apologized for having failed to prevent his company from submitting fuel efficiency declarations that were noncompliant with Japanese rules, will retain his role as chairman.

Ford concerned about growing costs for environmental compliance

Jim Farley, head of Ford's European operations, expressed concern in a *Financial Times* interview that the automotive industry could become "elitist" due to rising costs of complying with EU environmental targets. According to Farley, commercial customers such as fleet managers are able to buy more expensive engines for their vehicles that comply with emission regulations, but passenger car customers "often have budgets" that restrict what they can afford.



IP DEVELOPMENTS

US enacts law to protect trade secrets

The United States has enacted the Defend Trade Secrets Act (DTSA), a positive development for automotive companies seeking to protect their confidential technologies. Before the DTSA, state laws, with their variation in substance and procedures, almost exclusively controlled trade secret cases. Now companies can invoke the federal courts and the DTSA, in addition to existing state trade secret laws, to seek an injunction, damages for trade secret misappropriation, and seizure of goods. To maximize the benefit of the DTSA's stronger protections, employers need to provide certain prescribed notices to employees in any agreement governing treatment of the employer's confidential information. The DTSA is expected to be invoked frequently by companies going forward, in addition to state trade secret laws.

Cyber challenges give rise to new technologies companies

Established software vendors and start-ups are announcing new vehicle cybersecurity products. At the recent TU-Automotive Conference in Detroit, companies including Karamba Security, Savari, and Symantec announced new products to help secure the tens of millions of lines of code in modern automobiles. Given the complexity and connectivity of today's auto technology, the security challenge is significant and growing, and appears to be creating a new, large market for anti-malware software specific to the industry.

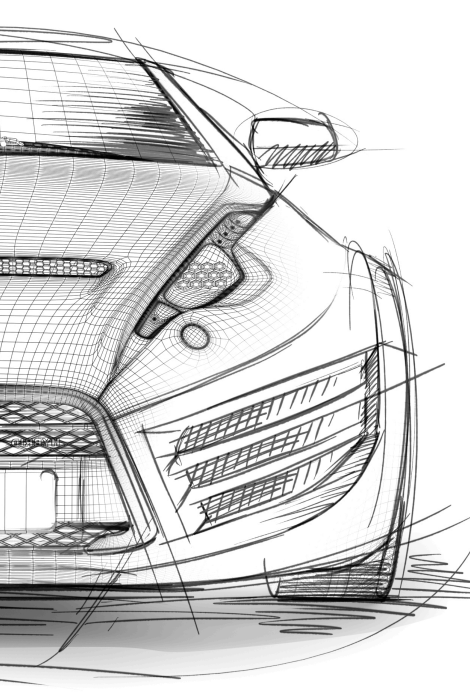
Auto companies participate in large patent purchase program

A group of well-heeled automobile companies, including Ford, Honda, Hyundai, and Kia Motors has joined tech companies Google, Microsoft, and others in a public offer to purchase patents. Patent owners were invited to submit patents through a web portal for review. Take-it-or-leave-it offers will be made on individual patents by the sponsoring companies by the end of July. The program calls particularly for high quality patents related to automotive, enterprise software, communications, networking, semiconductors, content delivery, and cloud computing. Patent owners will receive a grant back license so they can continue to use the patented technology after the sale.

Automotive innovation remains robust

In Thomson Reuters's 2016 State of Innovation Report, innovation across nearly all automotive technologies, with the exception of steering systems and safety, are reportedly up between 3% and 34% measured by patent filing increases. The top global innovators, measured by number of patented inventions, are reported to be:

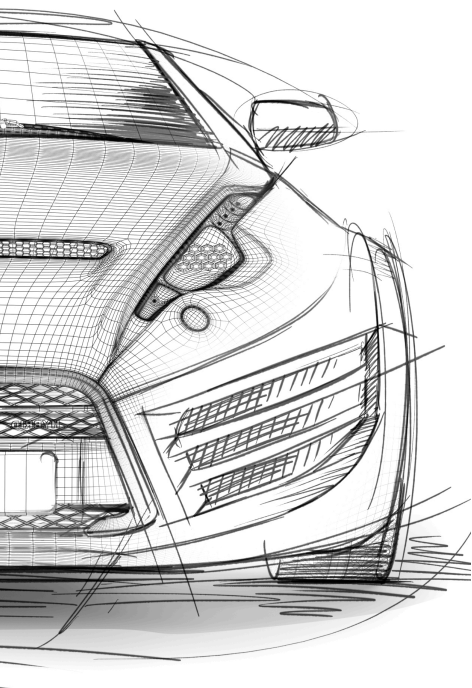
<u>Company</u>	<u>Country</u>	<u># Inventions</u>
Toyota	Japan	4,214
Hyundai	South Korea	2,469
Bosch	Germany	2,390
Denso	Japan	2,169
Honda	Japan	2,039



MORGAN LEWIS'S AUTOMOTIVE PRACTICE

The automotive practice at Morgan Lewis partners with global automotive industry companies in complex transactions and litigation, building and protecting their intellectual property portfolios, as well as crafting and implementing customized, effective business, finance, and tax strategies.

Taking a holistic view of the auto industry—the advent of unprecedented government involvement, a shifting competitive landscape, the race for new technology and talent, and greater consumer and regulatory demands involving safety and the environment—we assist in developing precise legal strategies aimed at advancing our clients' specific business objectives.



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