

AUTOMOTIVE

Q4 / 2015

New Look. New Global Reach. New Name.

We're excited to announce that Morgan Lewis Automotive is taking the next step in its evolution, adding contributions from around the globe by leveraging the experience of the lawyers in our firm's 28 offices, and modernizing and expanding our distribution to bring clients and readers more expansive coverage of M&A, Antitrust, Regulatory, Intellectual Property, and other developments in the automotive world.

With this next step, we have changed the look of the newsletter and altered its name from Morgan Lewis' Automotive News to Morgan Lewis Automotive. We hope you'll enjoy the updated look and feel and agree that the new approach better reflects the fresh brand and expanding global reach of Morgan Lewis.

This issue of Morgan Lewis Automotive covers the fourth quarter of 2015. Going forward, all issues of Morgan Lewis Automotive will be available on the morganlewis.com website. Prior issues of the newsletter can be found in the Frankfurt office publication archives by [clicking here](#).

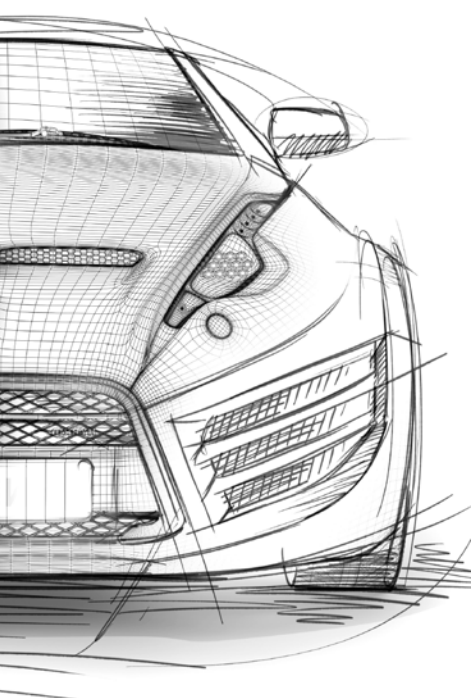
IN THIS ISSUE

M&A Developments covers Plastic Omnium's acquisition of Faurecia's Automotive Exteriors Business, as well as the attempt to settle the issue of France's influence on Renault (and indirectly on Nissan).

Antitrust Developments reports on a commitment decision by the German Federal Cartel Office that requires Ford, Opel, and PSA to change sales terms that apply to their German dealers' internet sales. We also report on a Swiss court decision confirming a fine imposed on BMW for preventing sales into Switzerland.

Regulatory Developments covers fines imposed by the US NHTSA on Fiat Chrysler, Takata Corporation, and BMW for violations of the US Motor Vehicles Safety Act, and also covers the draft rules proposed by California for the public deployment of autonomous vehicles.

IP Developments reports on recent decisions by automotive original equipment manufacturers (OEMs) to move their research and development departments to California, Chinese OEM BYD Electronic winning the Patent Gold Medal from China's State Intellectual Property Office, and US patent statistics.



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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

Plastic Omnium to Acquire Faurecia's Automotive Exteriors Business

Plastic Omnium S.A. and Faurecia S.A. signed a Memorandum of Understanding for Plastic Omnium's acquisition of Faurecia's automotive exteriors business (bumpers and front-end modules) for an enterprise value of EUR 665 million. With 7,700 employees at 22 sites, Faurecia's automotive exteriors business achieved worldwide sales of EUR 2 billion in 2014. The transaction will require antitrust approval from a number of different competition authorities. Following the transaction, Plastic Omnium will be among the 25 largest automotive suppliers, with expected worldwide sales of more than EUR 8 billion. Faurecia stated that it will use the proceeds of the transaction to significantly lower its debt.

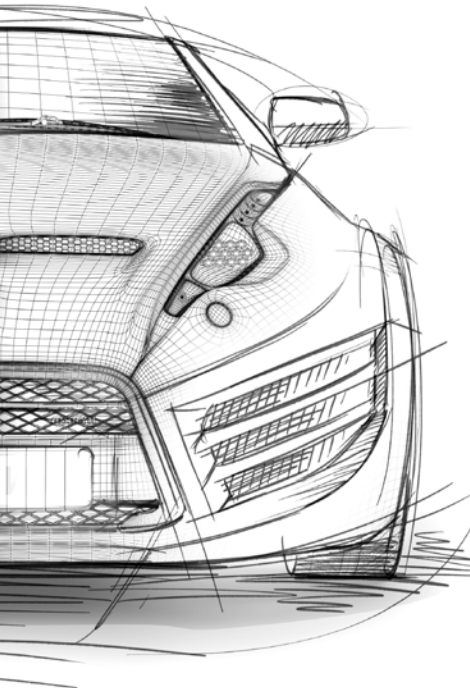
Renault's Board Limits Voting Rights of France

The feud between Renault S.A., Nissan Motor Corporation, and the French government regarding France's influence on Renault and Nissan (through Renault's 43.4% participation in Nissan) may have come to an end after Renault's board of directors has agreed to limit the French government's voting rights to just under 18% (or 20% in exceptional circumstances). The agreement is also said to reinforce the principle of noninterference by Renault in Nissan in certain matters (despite holding a 15% share in Renault, Nissan has no voting rights in Renault's shareholder assembly).

Investments in Augmented Reality Companies

Robert Bosch GmbH announced that it acquired a minority participation in Reflekt GmbH, a provider of industrial augmented reality (AR) applications. Both Bosch and Reflekt have already established a joint AR platform, which facilitates the integration of AR applications in technical documentations.

In parallel-but-unrelated transactions, PTC, a US-based provider of technology platforms and enterprise applications for connected products (the so-called "internet of things") acquired the Vuforia business from Qualcomm Connected Experiences Inc. (a subsidiary of Qualcomm Incorporated) for USD 65 million and acquired Kepware for USD 100 million. The Vuforia business is expected to deliver new applications that create ways to design, monitor, and control products and the Kepware acquisition is expected to enhance PTC's portfolio of IoT technology and accelerate the company's entry into the factor setting and Industrial IoT.



M&A DEVELOPMENTS

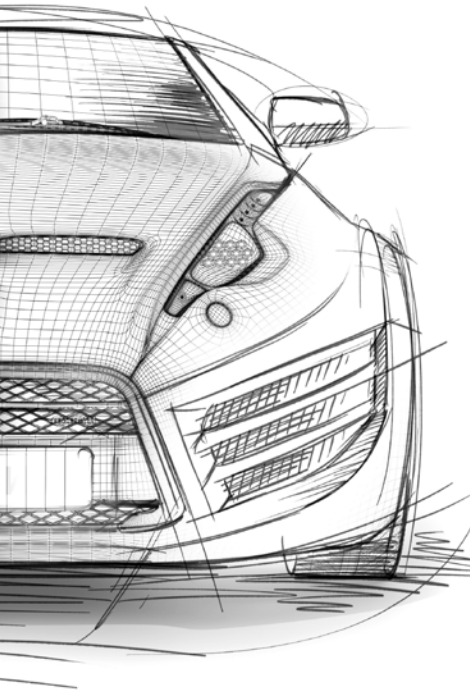
Valeo to Acquire Peiker and Spheros

Valeo S.A., the French tier-one supplier, announced its acquisition of Peiker Acoustic GmbH & Co. KG, a leading German supplier of acoustic solutions, connectivity products, and multimedia solutions for cars. The acquisition is subject to antitrust approval. With about 1,000 employees, Peiker is reported to achieve worldwide sales of EUR 310 million. As rationale for the transaction, Valeo indicated that it plans to offer OEMs new telematic systems equipped with high-speed connectivity and cybersecurity features.

Further, Valeo is to acquire Spheros GmbH, a leading German supplier of air conditioning systems for buses. Spheros is reported to have annual revenue of around EUR 250 million and plants in Germany, Finland, Turkey, the United States, Brazil, China, and India. Valeo expects the bus market to grow by more than 5% annually over the coming years and hopes to participate strongly in this growth with the acquisition of Spheros, whose margins are said to be higher than Valeo's. This transaction is also subject to antitrust approval.

Mahindra Buys Pininfarina

The Indian manufacturer Mahindra Ltd. bought a controlling interest of 76.06% in the Italian designer and coachbuilder Pininfarina S.p.A. and will issue an offer for the remaining shares at a later date. Mahindra will also invest EUR 20 million in Pininfarina and provide a guarantee to its creditors. The deal is reportedly worth EUR 168 million. According to the parties, Pininfarina will help Mahindra to improve its design and allow it to forge relationships with European OEMs. In return, Pininfarina will have access to greater economies of scale. Pininfarina, which is expected to remain a separate company, had accumulated a debt of EUR 52.7 million in recent years.



ANTITRUST DEVELOPMENTS

United States Indicts Japanese and German Supplier Executives

US federal Grand Juries indicted Japanese and German executives for bid rigging and price-fixing, respectively. The first indictment alleges that three Japanese executives (the name of their employer was not disclosed) conspired with their competitors to fix the prices of body sealing products sold to US subsidiaries of Honda and Toyota from 2003 to 2011. The second indictment was issued in the context of the fine imposed on the US subsidiary of Eberspächer Climate Control Systems GmbH & Co. KG (see also Automotive News 2015/2, page 3) for its participation in a parking heater price fixing conspiracy.

US Department of Justice Imposes Fine on Japan's INOAC

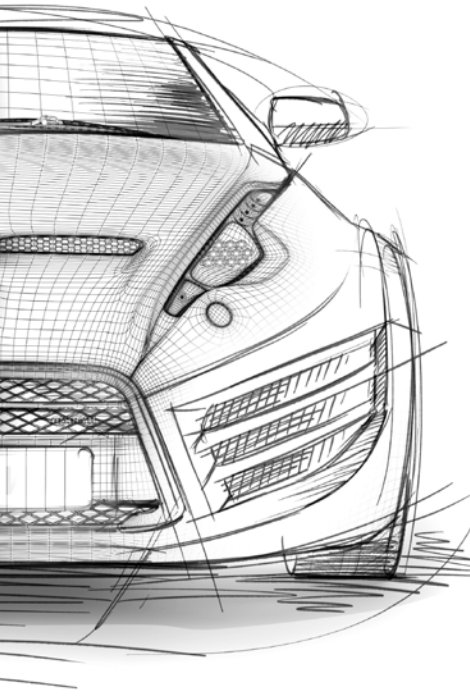
The US Department of Justice (DOJ) announced that INOAC Corp. has agreed to plead guilty and pay a USD 2.35 million criminal fine for fixing the price of plastic interior trim automotive parts between mid-2003 and September 2012. INOAC's co-conspirators were not identified.

German Federal Cartel Office Requires Ford, Opel and PSA to Change Sales Terms

The German Federal Cartel Office (FCO) concluded its investigation of the contractual terms of Ford Werke GmbH, Adam Opel AG, and PSA Peugeot Citroën that apply to their German dealers' internet sales (see Automotive News, 2015/2, page 3). According to the FCO, the contractual terms were fashioned in a way that dealers would risk losing bonuses and sales benefits if they used internet portals (such as autohaus24.de) to sell new cars. The FCO considered these terms to restrict the dealers from making active and passive sales to consumers within the meaning of Art. 4 lit. (c) of the EU's vertical block exemption regulation. Following Ford's, Opel's, and PSA's commitment to clarify and inform dealers that their contractual terms should not be construed as punishing them for making sales via internet portals, the FCO closed its investigation without imposing a fine.

Swiss Court Confirms Fine Imposed on BMW for Preventing Sales Into Switzerland

The Swiss Federal Administrative Court, acting as a court of appeal, confirmed a fine of SFR 156.9 million (USD 159.14 million) imposed by the Swiss Competition Commission (ComCo) on BMW AG for restricting its dealers in neighboring countries from exporting into Switzerland. The court stated in its decision that ComCo has jurisdiction if agreements entered into abroad have effects in Switzerland. It also held that territorial restrictions that prevent active and passive sales into the countries constitute severe violations of the Swiss Competition Act. BMW may appeal this decision to the Swiss Federal Court.



REGULATORY DEVELOPMENTS

US NHTSA Imposes Fines on Fiat Chrysler, Takata, and BMW

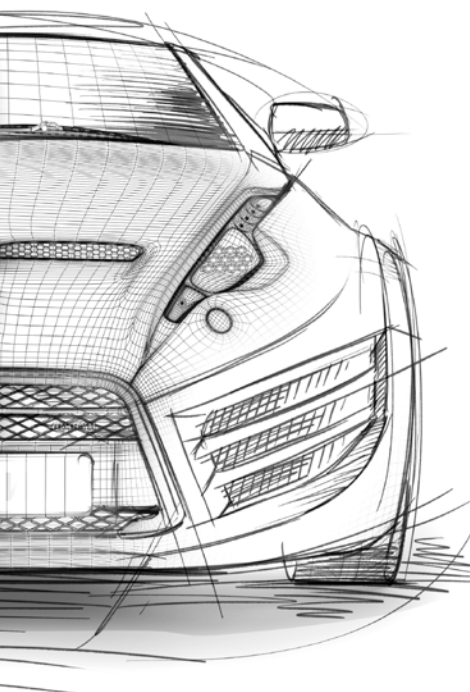
The US National Highway Traffic Safety Administration (NHTSA) imposed an additional fine of USD 70 million on FCA US LLC, the US subsidiary of Fiat Chrysler Automobiles N.V., for additional violations of the Motor Vehicles Safety Act (Act) of which FCA US had informed the NHTSA in September 2015 (see Automotive News 2015/3, page 3).

Takata Corporation, a Japanese manufacturer of airbags, agreed to pay a civil penalty in the amount of USD 200 million for violations of the Act. Of that USD 200 million fine, USD 70 million is required to be paid in cash. Takata also agreed to phase out certain inflators suspected of being partly responsible for explosive ruptures in airbags that caused a number of deaths, and to accept the oversight of an independent monitor for five years. Furthermore, Takata and the car manufacturers to which it sold airbags were directed to prioritize their recall and repair programs based on risk. The remaining USD 130 million fine would become payable should Takata fail to meet its commitments, or if further violations of the Act are discovered.

BMW of North America LLC agreed in another consent order (Order) with the NHTSA to pay a USD 40 million fine for a series of violations of the Act relating to certain cars of its Mini brand. Of this amount, USD 10 million is due in cash and USD 10 million must be spent to meet the Order's performance requirements. The remaining USD 20 million will become due if BMW violates the Order or commits other safety violations. The Order's performance requirements include, among other things, obtaining an NHTSA-approved independent expert to develop best practices, and a plan to prevent dealers from selling new cars with unremedied safety defects.

California Announces Draft Rules for Autonomous Vehicles

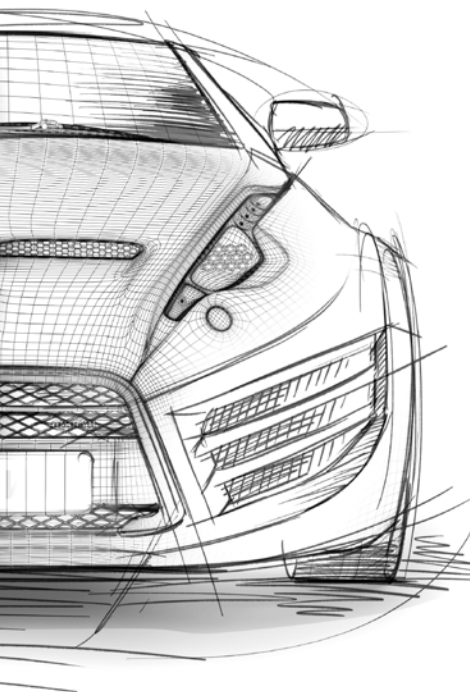
The Department of Motor Vehicles of the US State of California, where many of the world's autonomous vehicles are tested, released draft regulations for the public deployment of driverless cars. Key aspects of the draft regulations include that OEMs will have to certify compliance with specific autonomous vehicle safety and performance requirements, which will be double-checked by a third-party testing organization. According to the draft, a natural person in possession of the applicable license will be required to be present in the vehicle and capable of taking control. As soon as they have been approved for a three-year term, OEMs will be able to test their cars in California, subject to reporting requirements. Furthermore, the drafts provide for specific data protection and cybersecurity requirements. Google Inc., which is developing a driverless car to be run without its operator being able to take control, publicly criticized the draft regulations' requirement that a licensed driver needs to be able to take control. According to Google, the whole point of a self-driving car is that the occupants can sit back and relax without having to take charge of the vehicle in an emergency.



REGULATORY DEVELOPMENTS

EU Commission Sues Germany for Noncompliance Regarding Cooling Agents Regulation

The EU Commission is suing Germany for its alleged noncompliance with a regulation regarding cooling agents. According to the regulation, the cooling agent R134a needs to be replaced in new cars with the cooling agent R1234yf, which is said to contribute significantly less to global warming. The EU Commission argues that Germany was wrong to allow Daimler AG to keep using the old cooling agent in a number of new cars. Daimler has cited safety concerns for not making the change, claiming that R1234yf may turn into hydrofluoric acid in the event of an accident.



FIA Study Reveals Data Collected by Current Cars

A study commissioned by the European, Middle Eastern, and African chapters of the Federation Internationale de L'Automobile revealed, on the basis of the example of current conventionally fueled and electric vehicles, that modern cars may collect a vast amount of personal information such as the number of trips taken and the distance travelled, the tightening of seatbelts due to sudden breaking, the destinations entered into the navigation system, as well as contact information synchronized from mobile phones (for more information see www.fiaregion1.com).

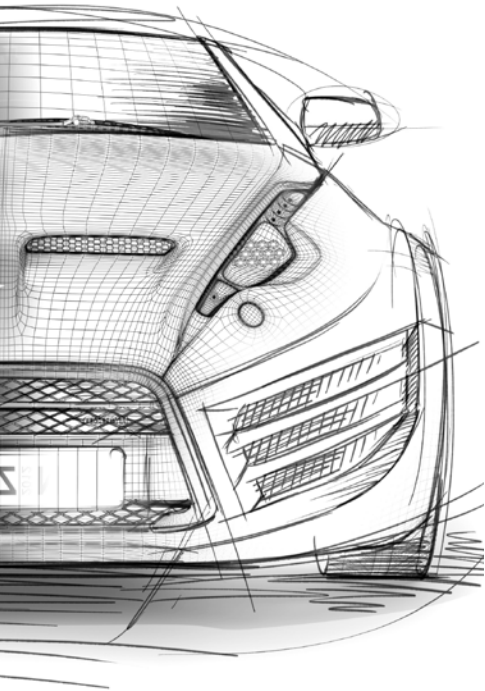
ACEA Calls for Caution in Current Discussion on Emissions

ACEA, the European Automobile Manufacturers Association, called for caution in the current discussion on stricter emissions testing procedures. Citing its long-term advocacy for updated laboratory tests for measuring pollutant and CO₂ emissions as well as an additional test under real driving conditions, the ACEA highlighted the importance of diesel engines for the European automobile industry's success in reducing CO₂ emissions. According to the ACEA, any new regulation that would make new diesel vehicles more expensive might prove counterproductive for the environment because older diesel vehicles with higher CO₂ and pollutant emissions would only be used longer. Further, ACEA also rejects the notion that emission testing procedures in the United States are stricter than in the EU given that the US systems are based on manufacturers meeting fleet average emission targets and because of the flexibility to phase-in new vehicles.

IP DEVELOPMENTS

Auto Industry is Moving R&D to Silicon Valley

Ford Motor Company in 2015 opened its newest automotive research and development facility in Palo Alto, California. In the last five years, BMW, Honda Corporation, Hyundai Motor Company, Daimler's brand Mercedes-Benz, Nissan, Renault, and Toyota Motor Corporation each has opened research and development centers in Silicon Valley. General Motors is also reported to have opened a facility in Palo Alto that focuses on browsers for Cadillac infotainment systems, while Nissan is reported to be focusing on autonomous vehicles in its Silicon Valley center. To complement the facilities, companies are reported to be hiring top-flight security and systems engineers from tech companies in the Valley to focus on cybersecurity, infotainment systems, autonomous vehicles, and other aspects of software-defined vehicles.



China Awards Patent Gold Medal to New Energy Vehicle

China-based automaker BYD Auto Company Ltd. announced in December that it had received a China Patent Gold Medal for the hybrid drive system employed in its Qin car. The award is reported to be in its seventeenth year and is given by the State Intellectual Property Office (SIPO) of the People's Republic of China. This is the first time the award has been given to a manufacturer of alternative energy vehicles. BYD also collected two Patent Awards of Excellence from SIPO for battery technology and one Design Excellence award for the Qin.

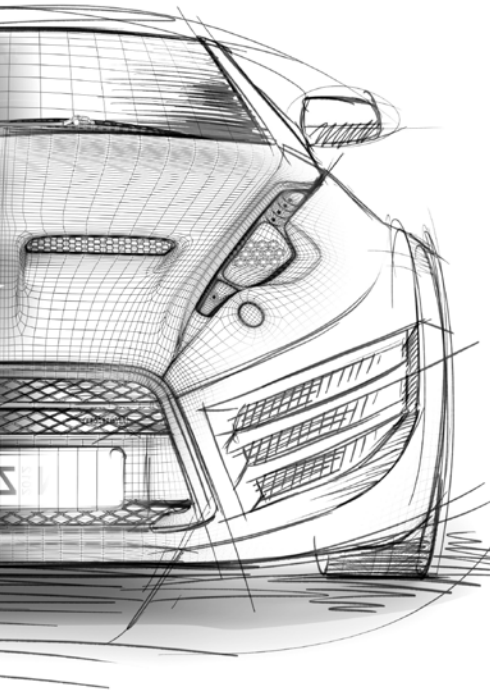
Patents and Patent Filings Up Among Automotive Manufacturers

In December, data journalism service Sqoop published year-to-date patent statistics. The report notes that Toyota and General Motors are the only two automakers to crack the top 20 companies in terms of issued US patents. However, Toyota, Ford, Hyundai, and General Motors have each been issued more patents this year than last, and each are in the top twenty for the number of patent applications filed. Trends in electric and autonomous vehicles and on-board computer technologies are believed to be pushing the trend.

Morgan Lewis's Automotive Practice

Morgan Lewis's Automotive Practice partners with global automotive industry companies in complex transactions and litigation, building and protecting their intellectual property portfolios, and crafting and implementing customized business, finance, and tax strategies for many years.

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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