Morgan Lewis

AUTOMOTIVE

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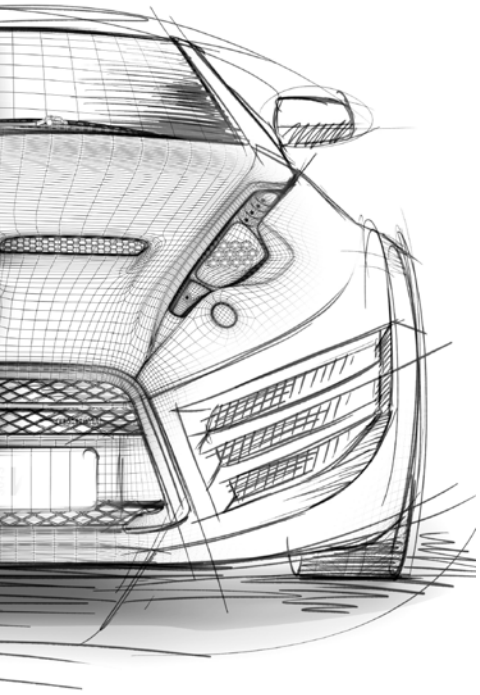

This is the seventh issue of our newsletter on developments in the automotive industry published by Morgan Lewis's automotive practice, adding contributions from around the globe by leveraging the experience of the lawyers in our 28 offices. We counsel our automotive clients on a broad range of industry-specific 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 first quarter of 2016, touches on issues relating to the connected car, autonomous vehicles, and other developments in the global automotive markets. All issues of *Morgan Lewis AUTOMOTIVE* will soon be available at morganlewis.com. Previous issues of the newsletter can be found here.

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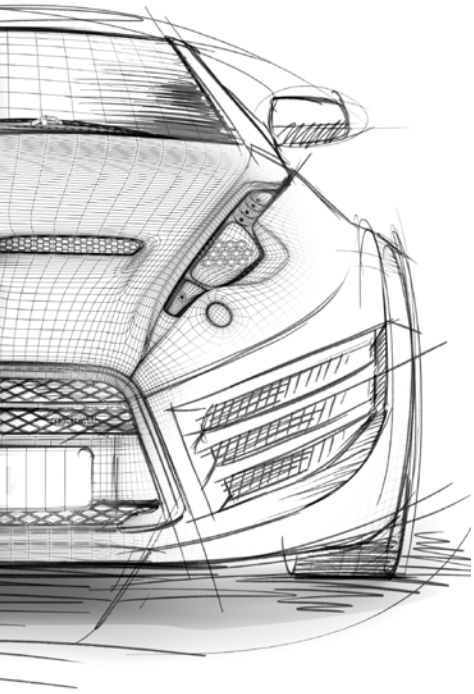
M&A Developments: Two transactions by China's Ningbo Joyson Electronic, one in Germany and one in the United States; Johnson Controls and Tyco International's reverse takeover; General Motors' acquisition of two start-up companies offering mobility services and autonomous driving technology; Iranian government announces privatization of its automotive industry.

Antitrust Developments: European Commission and the US Department of Justice impose fines for price fixing of Tier 1 suppliers to the automotive industry; Spanish Competition Authority starts a new cartel investigation; German procurement tribunal declines to review toll system negotiations.

Regulatory Developments: Twenty car manufacturers commit to make automatic emergency braking a standard feature; current developments on autonomous driving; litigation against Volkswagen; European Parliament signs off on new emission regulations; an FTC workshop on auto distribution.

IP Developments: Ford files movie screen patents for cars driving autonomously; Google's increasingly successful license on transfer patent program; the growing use of joint development agreements in the automotive industry.

M&A DEVELOPMENTS



China's Ningbo Joyson Makes Acquisitions in Germany, the US

Chinese Tier 1 supplier Ningbo Joyson Electronic announced the joint acquisition of the business automotive unit of TechniSat Digital GmbH, together with its German subsidiary Preh GmbH. Ningbo Joyson and Preh will each hold 50% of the newly formed Preh TechniSat Car Connect GmbH, into which TechniSat's automotive activities will be transferred. Volkswagen Group is said to be the most important customer of TechniSat's automotive business. Preh TechniSat Car Connect GmbH has 1,200 employees and production facilities in Germany, the United States, Poland, and China. It offers car infotainment, navigation systems, car connectivity, and telematic solutions. Together with Preh GmbH it achieves about EUR 1.2 billion in worldwide sales.

Further, Ningbo Joyson announced its acquisition of US-based Key Safety Systems, a supplier of advanced-engineered safety products for automotive and nonautomotive markets. According to press reports, Shanghai-listed Ningbo Joyson is said to have paid USD 920 million for Key Safety, which had worldwide sales of USD 159 million in 2015. Key Safety has five research and development centers in the United States, Germany, China, South Korea, and Japan, as well as long-term business relationships with BMW, Volkswagen, and General Motors.

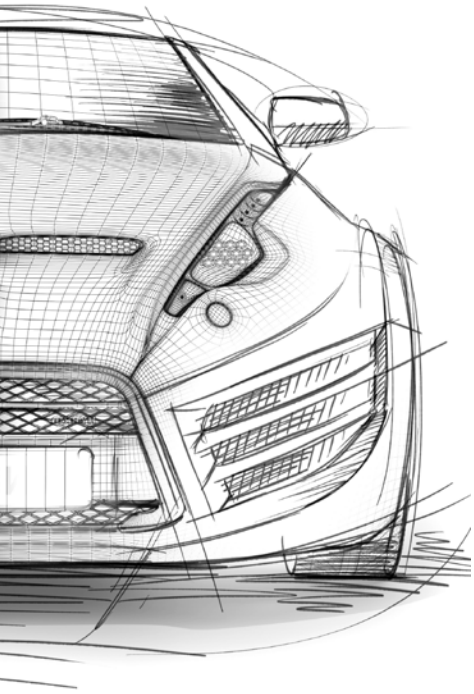
Johnson Controls, Tyco International Agree on Reverse Takeover

US-based Johnson Controls Inc. and the Republic of Ireland's Tyco International Inc. agreed on a reverse takeover. Pursuant to the agreement, Tyco shareholders will own 44% of the combined group, while Johnson Controls shareholders will hold the remainder and receive USD 3.9 billion in cash. The new company, which will be registered under Johnson Controls plc, will be headquartered in Cork, Ireland. Johnson Controls plc is expected to have USD 32 billion in worldwide revenues and operating profits of USD 4.5 billion. The transaction is structured as a "tax inversion" to allow Johnson Controls plc to make use of Ireland's lower corporate tax. A similarly structured (but significantly larger) transaction in the pharmaceutical industry was announced only two months before this transaction, and the Johnson Controls/Tyco transaction is expected to keep the current debate alive as US lawmakers explore making these transactions more difficult.

GM Acquires Ride-Hailing Service Company Lyft

General Motors announced its acquisition of Lyft, a company that provides taxis summoned by smartphone. Shortly thereafter, GM announced a new brand offering car-sharing service to consumers. GM's move reflects a growing trend among original equipment manufacturers (OEMs), which prepare for a future where consumers may no longer be willing to own vehicles. Daimler (Car2go) and BMW (DriveNow) have introduced similar services.

M&A DEVELOPMENTS



GM to Acquire Autonomous Vehicle Start-Up Company

GM also announced its acquisition of Cruise, a San Francisco–based provider of autonomous driving technology. According to media reports, GM is said to have paid USD 1 billion in a mixture of stock and cash for a company that was allegedly valued in its last funding round in December 2015 at USD 90 million. The transaction was announced on the same day Ford reported its decision to set up a separate Ford Smart Mobility division. The GM announcement is perceived as another indicator that traditional carmakers and Silicon Valley companies are competing fiercely to deploy truly autonomous cars. At the same time, there is a significant increase in partnerships between OEMs and technology companies in this area that try to exploit one another's strengths.

LKQ Acquires Rhiag Group

US-based LKQ Corporation announced its acquisition of Italian company Rhiag Group. Both companies are active in the distribution of car parts, replacement parts, components, and systems used in the repair and maintenance of passenger and light commercial vehicles.

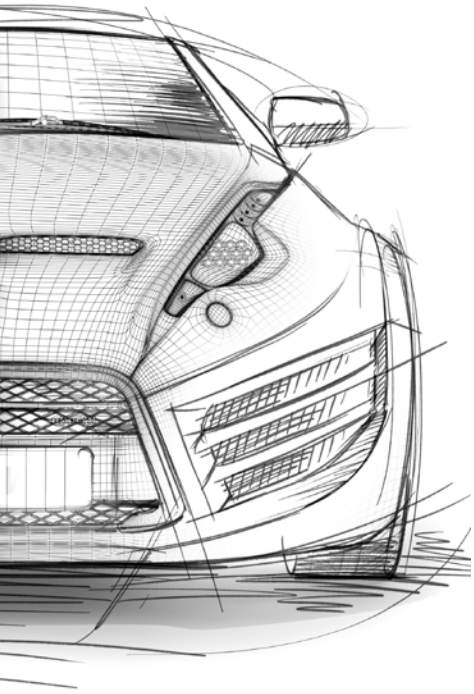
GAC Component, FCA to Establish Joint Ventures in China

GAC Component and Fiat Chrysler Automobiles reportedly will establish two joint ventures in China. GAC Component is a subsidiary of the state-owned Guangzhou Automobile Group. The two joint ventures are expected to manufacture and sell automotive transmissions. Guangzhou Automobile Group is the largest automobile manufacturer in south China and runs two joint ventures with Honda and Toyota in Guangzhou.

Iran to Privatize Its Automotive Industry

Following elections earlier this year, the president of the Islamic Republic of Iran, Hassan Rohani, announced the privatization of the Iranian automotive industry. According to President Rohani, Iran's entire automotive industry needs to be privatized and made competitive. As most sanctions imposed by the United States and the European Union are coming to an end, a number of automotive OEMs have already reached out to Iran. Germany's Daimler is said to have agreed to cooperate with Iran Khodro, Iran's largest manufacturer of trucks. Peugeot reportedly is also set to work with Iran's government.

ANTITRUST DEVELOPMENTS



EU Commission Fines Japanese Cart Part Manufacturers

The European Commission has imposed fines of EUR 137.8 million on Melco (Mitsubishi Electric) and Hitachi for participating in a cartel for alternators and starters with Denso in breach of EU antitrust rules. Denso escaped a fine because it revealed the existence of the cartel to the commission. Although contacts associated with forming and running the cartel took place outside the EU, the cartel affected European customers, as alternators and starters were also sold directly to car manufacturers in the EU. The commission stated that it would have imposed a fine of EUR 157 million on Denso if the company had not qualified for leniency under the commission's 2006 leniency notice.

All companies acknowledged their involvement and agreed to settle the case pursuant to the commission's 2008 Settlement Notice, which has proven to be an effective tool for the commission to speed up its antitrust proceedings.

The Korean Fair Trade Commission is running a related proceeding against Mitsubishi Electric and Denso.

DOJ Imposes Fine on Omron Automotive

The US Department of Justice (DOJ) announced that Japan's Omron Automotive Electronics Co. Ltd. has agreed to plead guilty and pay a USD 4.55 million criminal fine for bid rigging on power window switches installed in Honda Civics sold to US consumers. According to the felony charge filed in the US District Court for the Eastern District of Michigan, Omron and another manufacturer that was not identified conspired from 2003 to 2013 to rig bids on power window switches sold to Honda Motor Co. Ltd. That conspiracy extended to sales to Honda's US subsidiaries and affiliates, and the switches involved were installed in Honda Civics that were sold from 2005 through 2013.

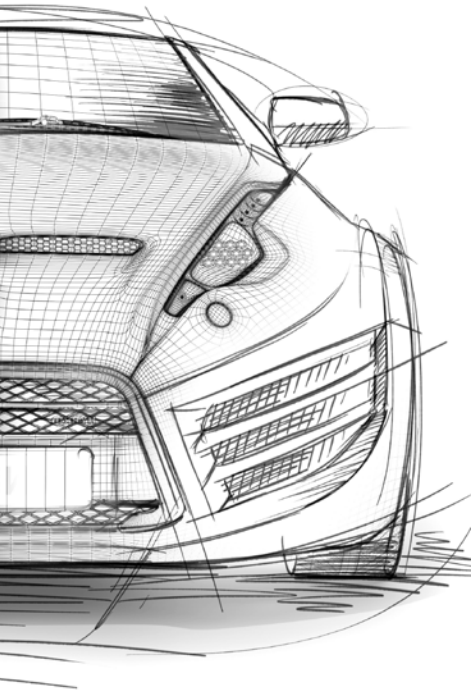
Spanish Competition Authority Raids Lining, Molding Manufacturers

The Spanish Competition Authority (CNMC) said it performed simultaneous unannounced inspections at several companies that manufacture lining and hard-molded components for cars due to suspected breaches of competition law. According to the CNMC, the manufacturers allegedly engaged in market partition agreements and the exchange of commercially sensitive information.

German Cartel Office Rejects Bid to Review Toll System Negotiations

The second Federal Public Procurement Tribunal, a decision body of the German Federal Cartel Office, rejected an application filed by Kapsch TrafficCom AG, Austria, which had objected to the exclusive negotiations conducted by the Federal Ministry of Transport and Digital Infrastructure with Toll Collect GmbH.

REGULATORY DEVELOPMENTS



Automakers Commit to Automatic Emergency Braking as Standard

The US Department of Transportation's National Highway Traffic Safety Administration (NHTSA) announced the commitment of 20 automakers, representing more than 99% of the US auto market, to make automatic emergency braking (AEB) systems a standard feature in their cars by 2022. AEB systems help prevent crashes or reduce their severity by applying the brakes for the driver. These systems use on-vehicle sensors such as radar, cameras, or lasers to detect an imminent crash, warn the driver, and apply the brakes if the driver does not take sufficient action quickly enough. NHTSA estimates that the agreement will make AEB systems standard on new cars three years faster than could be achieved through the formal regulatory process. Because of the commitment, AEB systems will be standard on virtually all light-duty cars and trucks with gross vehicle weights of 8,500 lbs. or less no later than September 1, 2022.

US Agency Assesses Impact of Safety Standards on Automated Cars

An assessment of Federal Motor Vehicle Safety Standards (FMVSS), performed by the John A. Volpe National Transportation Systems Center of the US Department of Transportation, identifies instances where current US standards may pose challenges to the introduction of automated vehicles. While the FMVSS often assumes the presence of a human driver, the analysis revealed that there are few barriers for automated vehicles as long as the vehicles do not significantly diverge from conventional vehicle design. On the other hand, alternative cabin layouts and the omission of manual controls would be constrained by the current FMVSS or its policy objectives.

Autonomous Driving Continues to Make Headlines

Google's announcement that one of its self-driving cars struck a bus as it changed lanes made headlines around the world, reflecting global interest in the subject. The accident was apparently minor and occurred at a low speed. It does not appear to suggest problems with the safety of automated vehicles, since the human in the car would have made the same mistake, as he failed to override the car's system.

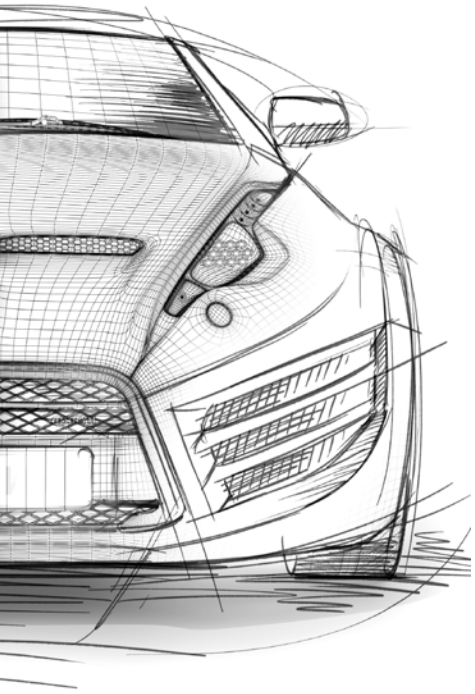
Irrespective of this incident, there are conflicting views as to when autonomous vehicles will become available. A GM representative reportedly said during the Autonomous Car Detroit conference that consumer sales of cars requiring no driver intervention were at least a decade away.

Simultaneously, Daimler used a special permission from the State of Baden-Württemberg to test drive a "platoon" of three long-haul freight trucks with autonomous driving on a German autobahn at speeds of up to 80 kilometers per hour and at distances between them of six to 15 meters, depending on speed.

REGULATORY DEVELOPMENTS

The system developed by Daimler connects the trucks by WiFi and is flexible enough to allow other vehicles that are changing lanes to drive between them. According to Daimler, the new technology can cut fuel consumption by 7% compared with driven vehicles because the shorter distance between the trucks improves aerodynamics. The British government recently granted permission for similar testing of trucks on the M6 in Cumbria.

EU Parliament Signs Off on New Emission Regulation



The European Parliament signed off on new emission-testing rules that will introduce on-road testing to determine whether cars comply with EU limits on emissions of nitrogen oxides. This development comes after the current system of lab tests was recently exposed as inadequate. While industry lobby groups welcomed the much-needed clarity and stressed that ensuring compliance with the new standards will be difficult, environmentalists criticized the new testing regime as inadequate.

Complaints Filed Against Volkswagen Group

The DOJ and the US Federal Trade Commission (FTC) filed complaints against various Volkswagen entities in the context of Volkswagen Group's admission that some of its diesel cars sold in the United States contained a so-called defeat device. The DOJ's complaint, filed in the US District Court for the Eastern District of Michigan, alleges civil violations of the federal Clean Air Act. The FTC's complaint, filed in the Northern District of California, alleges that in light of Volkswagen's recent admissions its advertising of its diesel cars is deceptive. A variety of authorities around the world have conducted similar investigations against Volkswagen. Further, a large number of civil complaints have been filed by Volkswagen consumers, dealers, and shareholders in various jurisdictions.

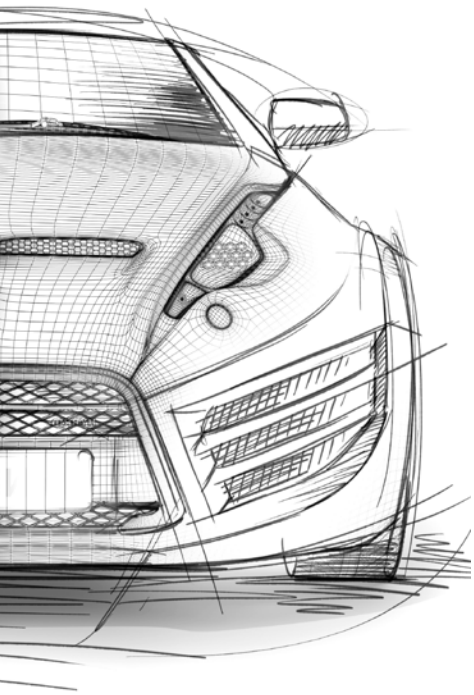
FTC Hosts Workshop on Auto Distribution

The FTC hosted a workshop on current issues and future trends in the distribution of cars in the United States. Panels discussed the effects of laws regulating the ability of OEMs to add new dealerships as well as the effects of regulation in some states restricting the ability of OEMs to sell their cars directly. The workshop also discussed the need to adjust existing regulation in light of the effects of new products and services such as autonomous driving and car-sharing services. During an additional panel on the reimbursement of warranty services through OEMs, Morgan Lewis lawyers Dan Goldberg and Sam Rowley gave a presentation on State Regulation of Motor Vehicle Warranty Payments that can be downloaded here.

IP DEVELOPMENTS

Ford Patents Movie Screen for Autonomous Vehicles

Ford Global Technologies received US Patent No. 9,272,708 on an entertainment system that places a large movie screen behind the windshield or front seats to convert a car into a movie theater when the car is in autonomous mode. The patent describes a control that enables a different screen to be used when in autonomous driving mode compared to when a human driver is required. Continuing a trend, Ford's patent highlights the increasingly important role infotainment systems are playing in cars.



LOT Patent Pool Adds Korean Auto Companies

Korean companies Kia Motors and Hyundai became the latest automakers to join the license on transfer (LOT) patent program launched by Google in July 2014. Ford and Mazda are already members, along with many high-tech companies, such as Dropbox, Uber, and GitHub, and other companies, including JPMorgan Chase. Under the LOT agreement, companies license their patents to other LOT members, but a license only becomes effective if a patent is transferred to a third party that essentially becomes a patent assertion entity (PAE) with no other underlying business. The program has a small annual fee to cover the cost of administration. Kia and Hyundai bring more than 32,000 patent assets to the LOT network, which has more than 360,000 worldwide patent assets. The net effect is to reduce the supply of patents that might otherwise end up in the hands of PAEs.

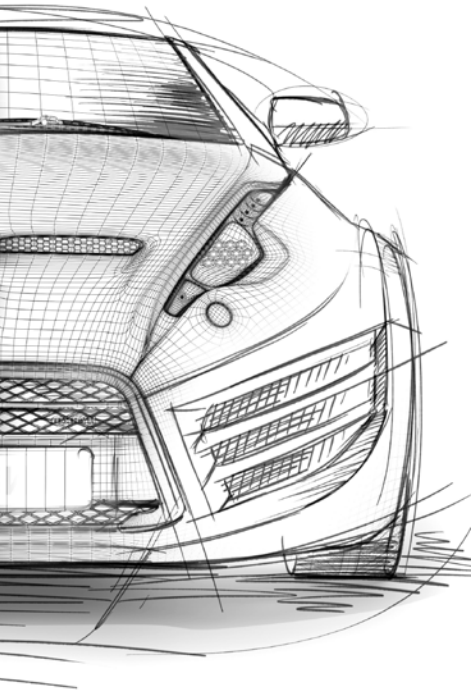
Joint Development Agreements Are on the Rise

Crain's Detroit Business reported that instances of automobile companies doing business with high-tech companies via joint development agreements (JDAs) have increased significantly. New technology content in cars, particularly in infotainment systems, is reportedly a big driver of these agreements. JDAs allow companies to address patent ownership and license issues in advance to facilitate cooperation and speed development of and lessen time to market for innovations, instead of requiring each company to have all the necessary skills for development in-house.

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, as well as crafting and implementing customized business, finance, and tax strategies that are effective 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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