

# AUTOMOTIVE

Q4 / 2017

Welcome to the 14th edition of our newsletter on developments in the automotive industry published by Morgan Lewis's automotive team with contributions from lawyers in our offices around the globe. We counsel our automotive clients on a broad range of industry-specific issues, including matters relating to mergers and acquisitions, antitrust, litigation, regulatory concerns, intellectual property (IP), and labor and employment.

This issue of *Morgan Lewis AUTOMOTIVE*, which covers the fourth quarter of 2017, touches on issues relating to self-driving cars, proposed regulations for diesel engine vehicles, and other developments in the global automotive markets. All issues of *Morgan Lewis AUTOMOTIVE* are available at [morganlewis.com](http://morganlewis.com).

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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.

# MERGERS & ACQUISITIONS

## **GM to Acquire Sensor-Tech Firm Strobe**

GM has announced its plans to acquire Strobe Inc., a US-based developer and producer of light detection and ranging (LIDAR) sensors, through GM's subsidiary Cruise Automation. The LIDAR technology is laser based and supports self-driving cars to screen its environment.

## **Alphabet to Invest \$1 Billion in Lyft**

Alphabet Inc.'s investment arm CapitalG led an investment of \$1 billion in Lyft. CapitalG will appoint one member to the Lyft board of directors.

## **BMW Self-Driving Collaboration to Add Magna**

Magna International has announced that it will join the self-driving collaboration by BMW, Intel, and Mobileye, which has the objective of bringing an autonomous vehicle (AV) platform to the market by 2021. Magna will help to customize the technology systems designed by the other members of the consortium to enable its integration across multiple OEMs. Other members of the consortium include Fiat Chrysler, Delphi Automotive, and Continental AG.

## **Delphi Acquires Self-Driving Car Startup nuTonomy**

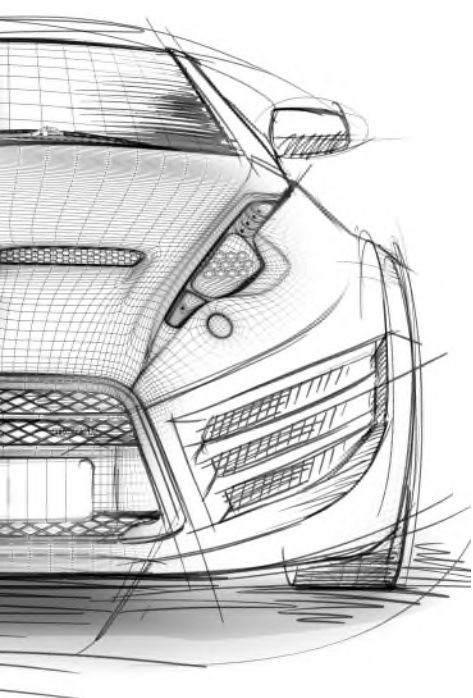
Delphi Automotive has acquired self-driving car startup nuTonomy, a US startup developing self-driving vehicle software, for \$450 million. NuTonomy was founded in 2013, and in 2016 started testing self-driving taxis in Singapore.

## **BMW to Divest Its stake in SGL Automotive Carbon Fibers to SGL Group**

BMW announced that it will gradually divest its 49% minority stake in SGL Automotive Carbon Fibers, a joint venture between BMW and SGL Group, between 2018 and 2020. SGL Automotive Carbon Fibers produces carbon fibers in Moses Lake, Washington, and carbon fabrics in Wackersdorf, Germany. BMW and SGL Group have entered into an agreement to cooperate regarding the application of carbon. BMW's shareholding of approximately 18.3% remains unaffected from the divestment of its joint venture shareholding.

## **PSA and Nidec to Enter into Joint Venture for Electric Engines**

The PSA Group and Japanese engines manufacturer Nidec Corporation have announced the formation of a joint venture for the development and production of electric traction motors. The joint venture will be based in France, and will design, develop, and manufacture electric motors for full-electric, plug-in hybrid, and mild-electric vehicles for PSA and other carmakers.



# MERGERS & ACQUISITIONS

## France to Sell Down Stake in Renault

The French Government is selling approximately 4.73% of OEM Renault for € 1.2 billion (\$1.4 billion). The sale reduces France's holdings in the company to 15.01%, which marks the level prior to the countries' additional financial engagement in 2015.

## Geely Holding to Acquire an 8.2% Stake in AB Volvo

Chinese company Geely Holding has announced that it will acquire an 8.2% equity stake in AB Volvo, a Swedish truck, bus, and agricultural machinery manufacturer, from Cevian Capital. The stake represents 15.6% of the voting rights in the company. In 2010 Geely acquired the Volvo Car Group from US-based OEM Ford.

## Wabco Holdings Inc. to Invest in Nikola Motor Company

Commercial vehicle supplier Wabco Holdings Inc. has announced the acquisition of approximately 1% of the shares of Nikola Motor Company for \$10 million. Nikola Motor is a US-based start-up company active in the development and manufacture of hydrogen-electric vehicles in particular trucks, vehicle components, energy storage systems, and electric drivetrains. Nikola plans to commence testing its developed zero-emissions trucks with commercial vehicle fleets this year and start production by 2021.

## Renault and Brilliance to Form Joint Venture on Light Commercial Vehicles

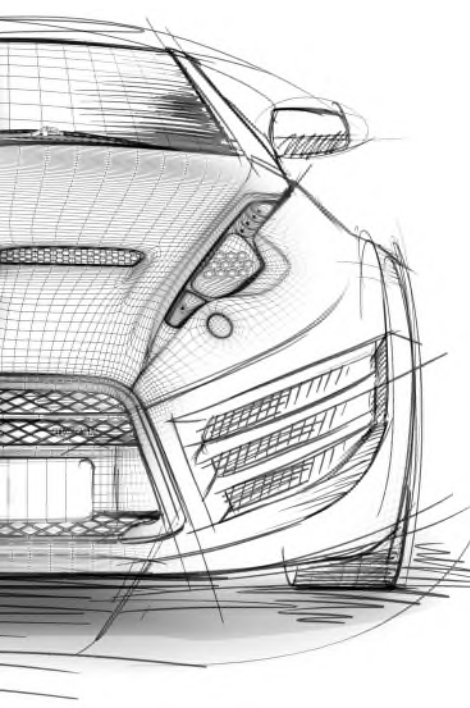
Groupe Renault and Brilliance China Automotive Holdings have announced that they will form a joint venture for the manufacture and sale of light commercial vehicles under the brands Jinbei, Renault, and Huasong. The joint venture's production facilities will be based in the Dadong District of Shenyang in China. It will mainly produce multipurpose vehicles as well as medium and heavy vans.

## Alibaba Group to Invest in Electric Car Start-Up Xpeng Motors

Retailer Alibaba Group has announced that it will invest in Xpeng Motors for an undisclosed amount. Founded in 2014, Xpeng Motors is a Chinese developer and manufacturer of electric vehicles. Besides Alibaba Group, GGV Capital and Matrix Partners China participated in the most recent founding round.

## Schaeffler Acquires Remaining Shares of Compact Dynamics

Automotive supplier Schaeffler has acquired the remaining 49% of the shares of Compact Dynamics GmbH from Semikron International GmbH. Compact Dynamics is a developer and producer of electric motors based in Starnberg, Germany, with a focus on preproduction and production of small series. In 2016 Schaeffle acquired 51% of the shares of Compact Dynamics.



# MERGERS & ACQUISITIONS

## **FAW, Dongfeng, and Changan to Form a Strategic Cooperation Relationship**

FAW Group, Dongfeng Motor Corporation, and Changan Automobile, China's three largest state-owned automobile manufacturers, have signed a strategic cooperation framework agreement. They plan to promote the development of China's automotive market and enhance the strength of China's automotive brands.

## **Magna and Huayu to Form a Joint Venture on Electric-Drive Powertrain Systems**

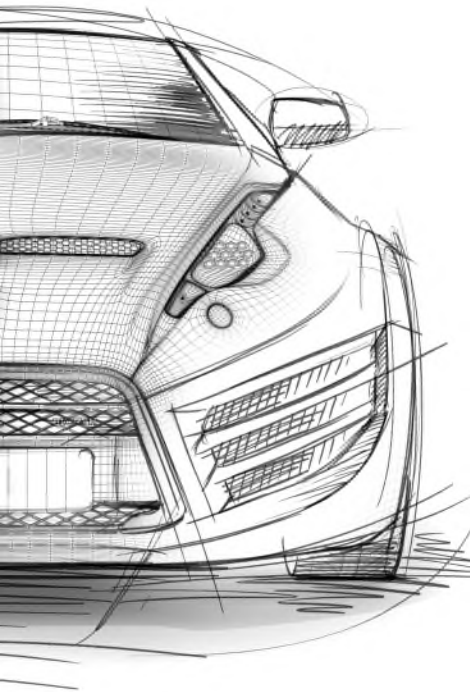
Magna has entered into a joint venture agreement with Huayu Automotive Systems Co., Ltd., a subsidiary of SAIC Motor. The registered capital of the joint venture is RMB200 million, with Huayu accounting for 50.1% and Magna accounting for 49.9%. The joint venture plans to produce electric-drive powertrain systems for automakers.

## **Volkswagen and JAC to Form a Joint Venture on Multifunctional Vehicles**

Volkswagen Group, Volkswagen Group (China), and JAC Motors have signed a memorandum of understanding on setting up a second joint venture for the research and development of multifunctional, or light commercial, vehicles. The joint venture would be half-owned by each of JAC Motors and Volkswagen. Volkswagen and JAC have already set up a joint venture for electric vehicles in Hefei, China.

## **GAC and NIO to Form a Joint Venture on Intelligent Cars and New-Energy Vehicles**

GAC and NIO have signed a joint venture agreement for the research and development of smart and new-energy vehicles; the registered capital is RMB500 million. GAC and NIO each owns 45% of the joint venture. The management team of the joint venture will account for the remaining 10% of the registered capital.



# ANTITRUST

## **EU Commission Clears Acquisition of FTE by Valeo**

The European Commission has approved the proposed acquisition of FTE (Germany) by Valeo (France). FTE and Valeo are both active in the development and manufacture of automotive equipment. The transaction has led to competitive concerns in the areas of passive hydraulic actuator modules and components as well as concentric slave cylinders for light vehicles. Therefore, the clearance decision is conditioned on the divestment of the passive hydraulic actuators business currently held by Valeo, with the exception of its Korean activities, to Italian car parts supplier Raicam. The transaction was originally notified in October 2016, but the parties withdrew the notification in November 2016 and notified it again in September 2017.

## **EU Commission Imposes Fines on Car Safety Equipment Cartel**

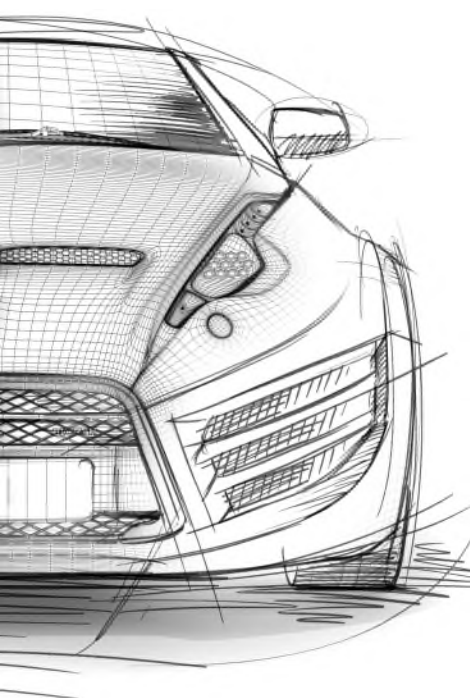
The European Commission has imposed total fines of € 34 million (more than \$40 million) on Tokai Rika, Takata, Autoliv, Toyota Gosei, and Marutaka for participating in one or more cartels for the supply of car seatbelts, airbags, and steering wheels to Japanese car manufacturers in the European Economic Area. Takata was not fined for three of the cartels because it revealed their existence to the EU Commission and, therefore, received leniency. Tokai Rika was not fined for one of the cartels because it disclosed its existence to the EU Commission.

## **KFTC Imposes Fines on International Automotive Parts Cartel**

The Korea Fair Trade Commission has imposed a total fine of \$33.3 million and corrective orders on three automotive suppliers for bid-rigging and customer allocation regarding fuel pumps and the variable value timing system market. In addition, a corrective order was imposed on the three companies with regards to fuel pumps. Denso Corporation Japan was a no-contract party with the other automotive companies; thus, no fine was imposed on it.

## **CADE Investigates Automotive Spare Parts Cartel**

The Brazilian Administrative Council of Economic Defense has initiated a cartel investigation regarding price fixing, market allocation, and the exchange of competitively sensitive information in the aftermarket and the original equipment manufacturer market for automotive spare parts.



# REGULATORY

## **GM to Pay \$120 Million to Resolve State Claims over Ignition Switches**

General Motors has agreed to pay \$120 million to resolve state claims over alleged defective ignition switches. The settlement involved 49 US states and the District of Columbia as the latest step in resolving legal claims over ignition switches that would cause cars to stall and prevent airbags from opening. General Motors previously paid approximately \$2.5 billion in fines and settlements in this respect. General Motors also agreed to a settlement of \$13.9 million with Orange County, California after the prosecution accused the automaker of intentionally concealing serious safety defects.

## **Germany to Build Test EHighway for Electric Trucks by the End of 2018**

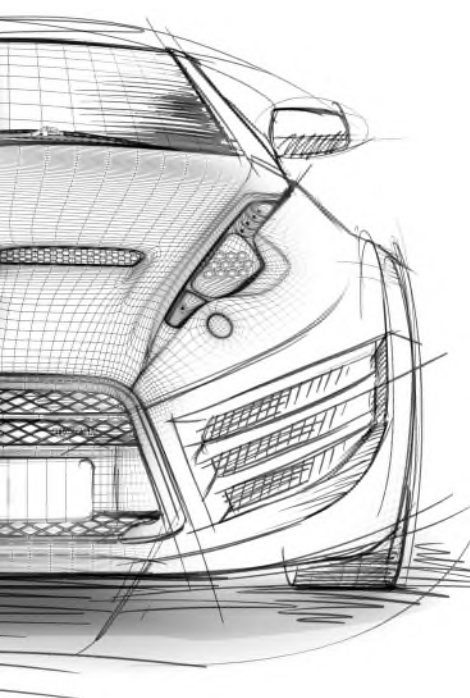
German federal state Hesse has begun to build Germany's first test highway for electric trucks. For this purpose, a total of 10 kilometers of electrical overhead lines will be installed on Germany's Autobahn A5 in the greater Frankfurt area. The installation is supposed to be completed by the end of this year. Hesse awarded Siemens with the relevant construction works. In November 2017 Siemens and the South Coast Air Quality Management District, the air pollution agency in Southern California, opened the first test eHighway in the United States with a length of approximately one mile between the harbors of Los Angeles and Long Beach.

## **Beijing to Publish New Self-Driving Vehicle Test Regulations**

The Beijing Transportation Commission, Beijing Traffic Management Bureau, and Beijing Municipal Commission of Economy and Information Technology have officially issued Guidance on Accelerating Road Testing for Self-driving Vehicles in Beijing (Trial), and Implementation Rules for Managing Road Testing for Self-driving Vehicles in Beijing (Trial) (collectively referred to as the Regulations). These Regulations are the first in China in the sector of self-driving vehicle road testing. The Regulations state that only legal entities registered in China may apply for the self-driving vehicle tests, which are to be conducted in designated areas at specific times. Entities must first complete necessary field testing and purchase accident insurance of at least RMB5 million, or provide an equivalent letter of guarantee for each test vehicle. Each test vehicle must also have a driver who has held a driver's license for at least three years.

## **China to Issue Final Guidelines on Standards for the Establishment of Self-Driving Cars**

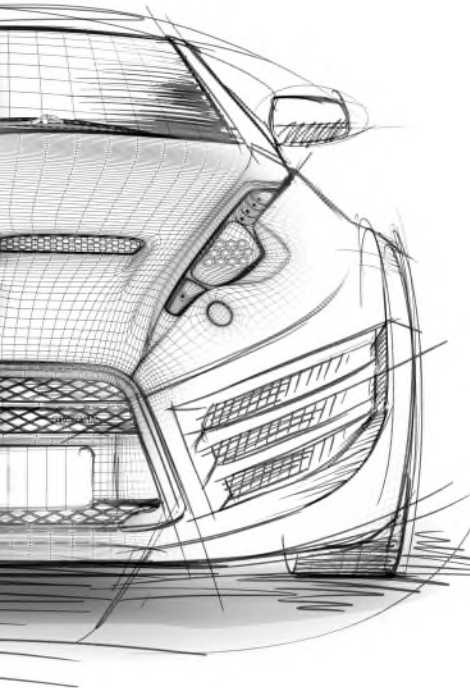
The Ministry of Industry and Information Technology (MIIT) and Standardization Administration of China (SAC) have jointly issued final Guidelines for the Establishment of National Standards System of Telematics Industry (Intelligent & Connected Vehicles) (Final Guidelines). The Final Guidelines set compulsory standards for self-driving vehicles as well as national standards for China's Intelligent & Connected Vehicles.



# REGULATORY

## Roundup: Emissions Violations Continue to Be in Spotlight

- The US Environmental Protection Agency and the California Air Resources Board have approved Volkswagen's plans to repair approximately 38,000 Volkswagen Group 3.0-liter diesel vehicles instead of requesting that the company buy back the affected vehicles.
- South Korea's Ministry of Environment has announced that it will impose total fines of approximately \$63.1 million on BMW, Mercedes Benz, and Porsche for falsifying documents on emissions test results and not obtaining approval for changes in emission-control components. BMW alone will be fined \$54.4 million for the alleged violations.
- Volkswagen has agreed to pay \$69 million to settle state emissions charges brought by the State of New Jersey. The settlement includes the state's legacy customer claims and environmental claims.
- The Dutch Authority for Consumers and Markets has imposed a fine of € 450,000 on Volkswagen for installing defeat devices in its cars, which lowered emissions once a car was in a testing environment.
- Volkswagen and Opel have succeeded against the German Environmental Aid (Deutsche Umwelthilfe) in its alleged claim to repair more than 2.4 million vehicles. The Schleswig Administrative Court held that environmental associations such as Deutsche Umwelthilfe are not allowed to bring claims against regulated products.
- The US Environmental Protection Agency and the California Air Resources Board have approved an emissions fix proposed by Audi for 24,000 of the OEM's 3.0-liter engines.
- The United States District Court for the Eastern District of Michigan has sentenced a former Volkswagen manager to seven years of imprisonment and a \$400,000 fine after he had pled guilty for his role in the Volkswagen diesel emissions issues in the United States.



# INTELLECTUAL PROPERTY

## **Milestone in NOx Emission Patent Case in Mannheim, Germany**

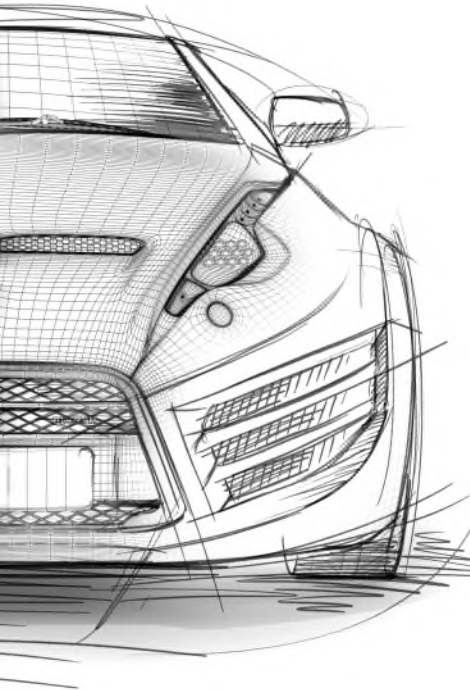
The Regional Court of Mannheim has issued a ruling favorable to Solvay on the German counterpart of Solvay's European Patent No. 1 435 338 B1 (Patent). The Patent addresses the use of certain rare earth, cerium oxide materials in Germany as catalysts for minimizing NOx emissions by diesel engines. Ever-stricter air quality standards require increasingly complex formulated rare earth oxides. Neo Performance Materials, Inc., the defendant and a Toronto, Canada-based company, was not able to convince the Mannheim court to wait to issue the ruling until the Patent Court issued a decision on the invalidity of the patent.

## **GM Patents Airbags Situated on Car Exteriors to Save Pedestrians**

Airbags are not just for passengers. General Motors has received a patent (US Patent No. 9,834,171) on airbags positioned to deploy on the front exterior regions of a car to protect pedestrians. The patent has a large number of drawings and describes many variations in implementation. Some examples describe an airbag mounted in a fender region laterally adjacent to a hood and in front of a vehicle side door to protect passengers from impact with the roof posts, among other parts, after a collision. Volvo has deployed a pedestrian airbag on its V40 model, which seeks to cushion the windshield area.

## **Automotive 3D Printing Market Size to Expand Lucratively**

SBWIRE reports that 3D printing is significantly transforming the way automobiles are designed and developed and is poised for expansion. 3D printing allows rapid prototyping and flexibility and repair. Stereolithography, a 3D printing technology, is expected to hold the largest market share but other 3D technologies include electron beam melting, 3D inkjet printing, fused deposition modeling, laser sintering, and laminated object manufacturing. 3D printing has broad applicability beyond the auto industry, such as to consumer desktop 3D printing and printing of bio materials. Traditional IP rights are applicable to 3D printers, materials used in the printers, and the sale of manufactured goods. However, widespread and distributed 3D printing presents a challenge to traditional IP rights holders.

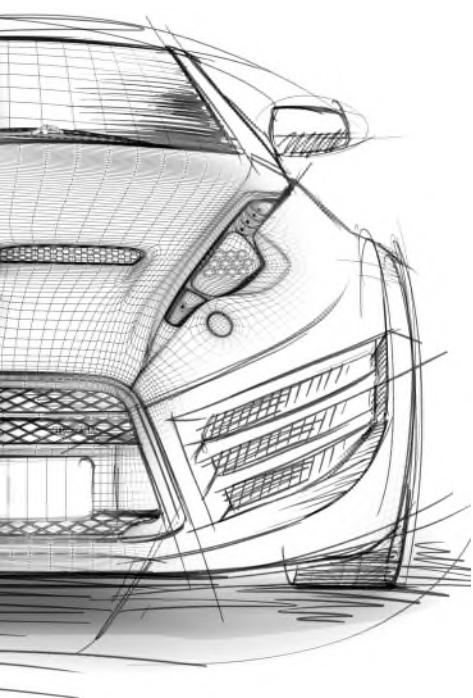




# MORGAN LEWIS'S AUTOMOTIVE TEAM

Morgan Lewis's automotive team partners with global automotive industry companies in complex transactions and matters, building and protecting their IP 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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