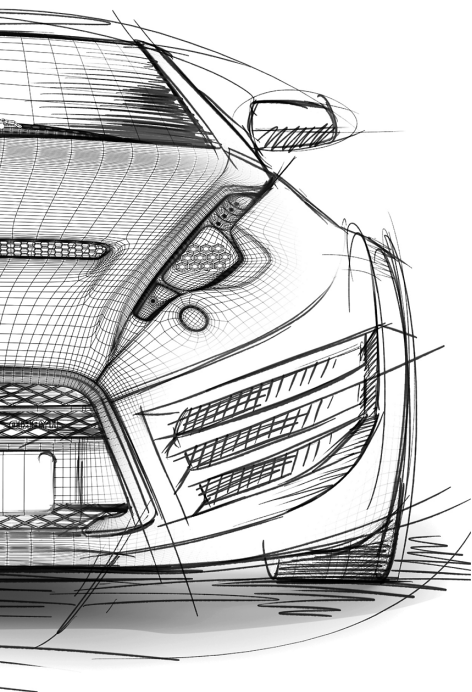


AUTOMOTIVE

Q3/2016

This is the ninth issue of our newsletter on developments in the automotive industry published by Morgan Lewis's automotive team, adding contributions from around the globe by leveraging the experience of the lawyers in our 29 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 third 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* are available at morganlewis.com.



IN THIS ISSUE

Mergers & Acquisitions: Liberty Media's acquisition of Formula One from a CVC consortium; the acquisitions of minority stakes by Mitsui in Gestamp and by Volkswagen in Navistar; Tesla's acquisition of SolarCity; Didi Chuxing's acquisition of Uber's Chinese operations; Daimler's acquisition of mobility services provider Athlon Car Lease; the establishment of a joint platform by BMW, Intel, and Mobileye; Dare Group's acquisition of German tier-1-supplier Carcoustic; and Renault/Nissan's acquisition of software company Sylphéo.

Antitrust: European Commission imposes fines on truck manufacturers for fixing prices between 1997 and 2011; Denso's settlement agreement with auto part manufacturers of antitrust damages claims; insurance company Geico's files complaint against auto part manufacturers; and the United States' indictment of auto parts executives for obstruction of justice.

Regulatory: United States publishes a policy paper on automated vehicles; tougher fuel economy and emission targets in China; establishment of the 5G Automation Association by automotive and telecommunications OEMs; self-driving cars offered by Uber; a software update for Tesla's autopilot; and recent developments regarding defeat devices around the globe.

Intellectual Property: New owner of the assets of Saab's automotive division finally decides to abolish the trademark Saab for cars; 3M Company enforcing its European patent for mixing and spraying of coatings for automotive collision repair; and the UK's Brexit vote endangers the new unitary patent system.

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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

Liberty Media to acquire Formula One

Liberty Media and CVC Capital Partners agreed on Liberty Media's acquisition of Formula One, the global motorsports business, from a consortium of sellers led by CVC. The transaction price is said to represent an enterprise value of \$8 billion. The consortium of sellers led by CVC will own approximately 65% of the entity into which Formula One will be merged and will have board representation to support Liberty Media in continuing to develop the full potential of the sport. Further, a CVC representative will join the board of Liberty Media. The deal will require approval from antitrust authorities and the International Automobile Federation (FIA), the governing body for Formula One's other global motorsport series. Bernie Ecclestone, 85, who has run Formula One for nearly 40 years and transformed the series into a business with an annual turnover of around \$1.9 billion is expected to remain CEO for an interim period. CVC acquired control of Formula One in March 2006.

Mitsui to acquire a 12.5% stake in Spanish Gestamp

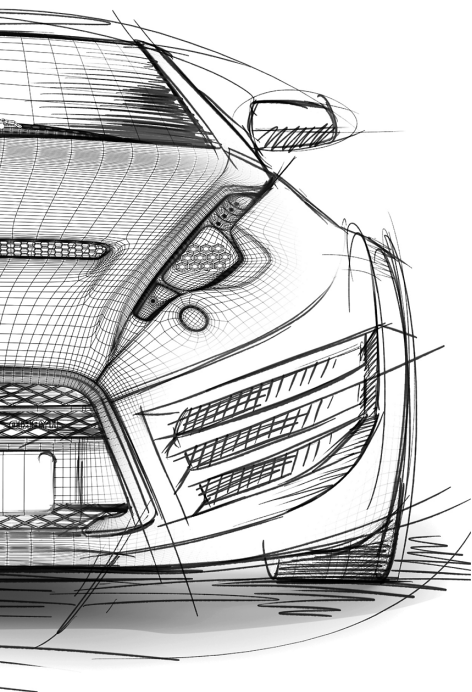
Mitsui & Co., the Japanese trading house that has been a partner of Gestamp Automocion since 2013 in North and South America, will acquire a 12.5% shareholding in the Spanish auto parts maker. According to statements of both parties, Mitsui is to invest €416 million (\$465 million) in Gestamp subject to adjustments. The transaction requires approval from a number of competition authorities. In 2015, Gestamp achieved a worldwide turnover of about €7 billion (\$7.8 billion) with about 33,000 employees in 20 countries.

VW acquires minority stake in Navistar

German car group Volkswagen AG will acquire a 16.6% minority stake in US trucks maker Navistar for \$256 million. Volkswagen's truck and bus division, which comprises the brands MAN, Scania, and Brazil's Volkswagen Caminhões e Onibus, will pay a 12% premium on Navistar's share price. The transaction is expected to create at least \$500 million in the development of powertrain technology in the next five years.

VW and JAC sign framework agreement on electric vehicles

Volkswagen and China's Anhui Jianghuai Automobile (JAC) signed a framework agreement on the development of electric vehicles in China. The parties agreed to combine both patents and know-how to develop a competitive product strategy as quickly as possible. The parties will now discuss the establishment of a joint venture. JAC is one of the largest manufacturers of electric vehicles in China and sells its trucks, SUVs, and buses under its two brands, Jianhuai and Ankai. The total number of electric vehicles (including plug-in hybrids) sold in China quadrupled last year to 180,000 vehicles.



MERGERS & ACQUISITIONS

Tesla to acquire SolarCity

Tesla Motors, the US manufacturer of electric vehicles, will acquire SolarCity, a solar power company, for \$2.6 billion. Elon Musk, who owns a stake in Tesla and is its CEO, also owns a stake in SolarCity, where he is also chairman.

Uber to sell its Chinese operations to Didi Chuxing

Uber decided to leave the Chinese market and to sell its Chinese operations to its local competitor, Didi Chuxing, which was recently able to raise significant financial resources (see *ML Automotive*, Q2/2016, page 2). According to media reports, Didi will acquire all of Uber's Chinese operations and investors in Uber China will get a 20% stake in Didi. (Uber holds the largest shareholding in Uber China; other shareholders include Baidu, the Chinese search company, and HNA, the Chinese travel conglomerate.) Further, Uber will receive a 5.89% stake in the Chinese company said to represent an "economic interest" equivalent to 17.7% with another 2.3% going to Uber China shareholders. Didi will also invest \$1 billion in an equity stake in Uber's global business.

Daimler acquires mobility services provider Athlon Car Lease

Dutch Rabobank sold Athlon Car Lease, an international provider of vehicle leasing and mobility solutions, to Mercedes-Benz Financial Services Nederland B.V., Daimler's financial services group company. Athlon Car Lease is said to be combined with Daimler Fleet Management and will continue to operate under Athlon.

BMW, Intel, and Mobileye establish joint platform

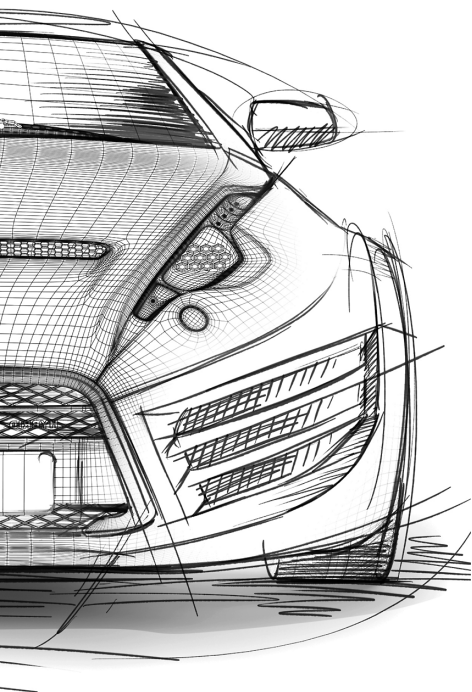
BWM Group, Intel, and Mobileye joined forces to offer self-driving vehicles and other future mobility concepts. The goal of the cooperation is to develop solutions that enable drivers to not only take their hands off the steering wheel, but reach the so-called "eyes off" level (level 3) and ultimately the "mind off" level (level 4). The parties intend offering the first cars in 2021.

Dare Group to acquire Carcoustic

Liaoning Dare Industrial Company Ltd. will acquire Germany-based tier-1 supplier Carcoustic International GmbH subject to regulatory approval. Carcoustic offers a broad range of acoustically and thermally effective products for the automotive industry and other industrial sectors. In 2015, Carcoustic achieved about €280 million (\$313 million) in global sales. China's Dare Group covers industrial diesel engines, automotive interior parts, high pressure CNC washing centers, and power steering pumps.

Renault/Nissan to acquire mobility software company Sylpheo

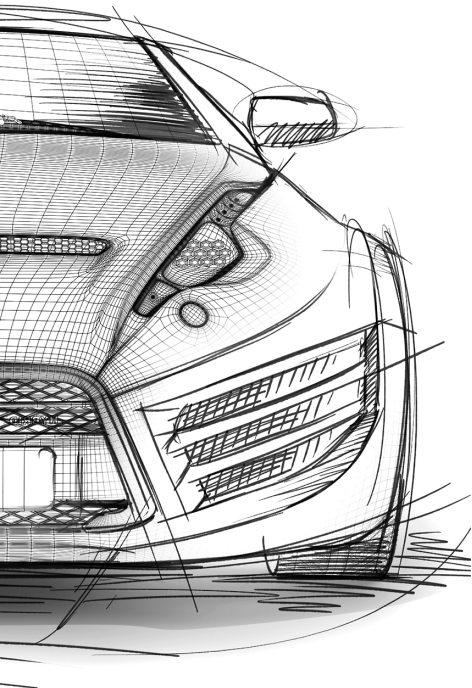
Renault SA and Nissan Motors Co. Ltd. will acquire French software development company Sylpheo to boost Renault/Nissan's software development and cloud engineering capabilities.



ANTITRUST

EU fines truck manufacturers for price fixing

The European Commission found that MAN, Volvo/Renault, Daimler, Iveco, and DAF breached EU antitrust rules by coordinating prices at “gross list” level for medium and heavy trucks, the timing for the introduction of emissions technologies, and for passing the costs for the emissions technologies on to consumers. According to the commission, the cartel covered the entire European Economic Area and occurred between 1997 and 2011. The commission found that meetings between the cartelists took place at senior-manager level between 1997 and 2004 and that from 2004 on the cartel used electronic communications to coordinate its behavior. The commission’s investigation started because of a leniency application filed by Volkswagen Group company MAN. The commission imposed record fines using its settlement procedure on Volvo/Renault, Daimler, Iveco, and DAF in the total amount of €2.9 billion (\$3.2 billion). All of these companies accepted their fines. The commission continues to investigate the other Volkswagen group company involved in the cartel, Scania, which did not agree to the settlement procedure.



Auto parts supplier Denso settles for \$ 255 million

According to court papers, Denso Corp. settled antitrust damages claims that arose in the context of cases brought by the US Department of Justice (DOJ) regarding antitrust offenses in the car parts industry for a total amount of \$255 million. Denso will pay \$193.3 million to car buyers and \$61.2 million to auto dealers. Denso pleaded guilty and paid a \$78 million fine for its role in 2012.

Geico Group sues auto parts manufacturers for damages

Insurance company Geico Group sued a number of auto parts manufacturers for damages in the US District Court for the Eastern District of Michigan for the manufacturer’s participation in various price fixing conspiracies. Geico alleges it purchased and reimbursed its insureds and third-party claimants for their purchase of auto parts and that it incurred damages because of the defendants’ illegal behavior.

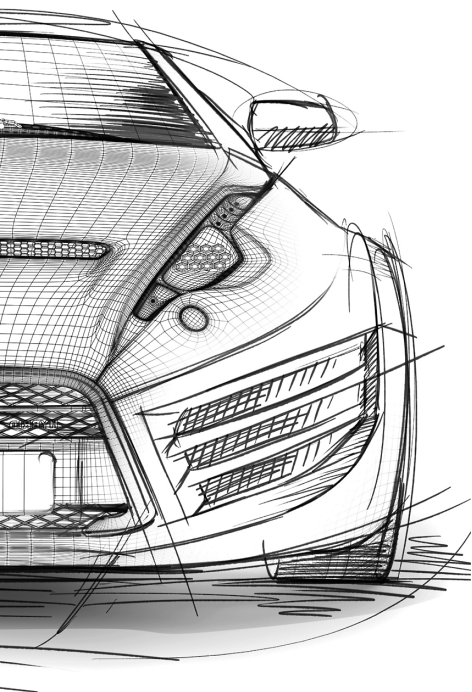
Auto parts executives indicted for obstruction of justice

FH, a current executive of an auto parts manufacturer, and MK, a former executive of another auto parts company, were charged with conspiring in a federal investigation. FH also was charged with attempted obstruction of justice. According to the indictment, the defendants, together with their co-conspirators, conspired from June 2008 to September 2012 to delete emails and electronic records and to destroy documents referring to communications with competitors. Further, FH was said to have instructed another individual to ensure that no phone numbers or call records remained on his cell phone and that no data remained on his computer that would reflect competitor communications.

REGULATORY

US publishes policy paper on automated vehicles

Citing the potential for increased safety and for new forms of personal mobility, the US Department of Transportation (DOT) published an extensive policy paper on highly automated vehicles (HAV). The first section of the paper outlines best practices for the safe predeployment design, developing, and testing of HAV prior to commercial sale or operation on public roads. Taking into account the need for motorists to be able to travel from one US state to the other by car, the second section of the paper contains a Model State Policy framework to prevent a patchwork of incompatible state laws. The paper's third section comprises an information and guidance document of the National Highway Traffic Safety Administration (NHTSA) that provides instructions, guidance, and assistance to entities wishing to introduce new HAV. The final section identifies potential new tools, authorities, and regulatory structures that could aid the safe and expeditious employment of new technologies. The DOT has invited public comment on its paper.



China to tighten fuel economy and emissions targets

According to news reports, China is going to tighten rules on cars' emissions and fuel economy. The Chinese government intends to reduce air pollution in towns and cities and to promote its domestic auto industry. With respect to emissions, the so-called Beijing rules that will apply beginning in 2018 are similar to US emission standards but tougher on nitrogen oxides than the European standards.

Automotive, telecomm OEMs form 5G Automotive Association

Audi, BMW, Daimler, Ericsson, Huawei, Intel, Nokia, and Qualcomm established the 5G Automotive Association to develop, test, and promote communications solutions for connected mobility services, including automated driving. The global association will define technical requirements, support standardization, and run joint R&D projects. It has invited other companies to join this cross-industry collaboration.

Brexit impacts automotive industry

The British pound's devaluation following the United Kingdom's decision to leave the European Union has triggered responses by a number of automotive OEMs. According to *Financial Times*, Ford, PSA Peugeot Citroen, and General Motors are likely to raise car prices in the UK. Ford is also said to consider closing its two remaining plants in Great Britain. Analysts have warned that the possibility of the UK facing trade barriers for exports into the EU following its departure from the European Union may lead to lower investments and the closing of existing plants.

REGULATORY

Uber offers self-driving vehicle fleet

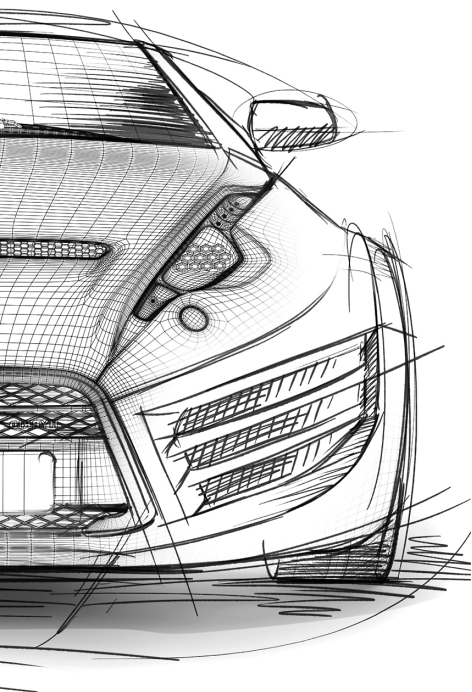
As part of its research on automated vehicles, Uber tested the world's first self-driving vehicle fleet in Pittsburgh. An Uber engineer will control the vehicle during the free-of-charge ride. Uber's self-driving ridesharing fleet started with a group of Ford Fusions. The fleet will soon be joined by a number of Volvo XC90s as a result of the joint research and development partnership between the two companies. For now, the autonomous service is limited to certain neighborhoods because all covered streets need to be pre-mapped in advance.

Tesla rolls out software update for its autopilot feature

Tesla rolled out a software update for the autopilot function of its electric vehicles. The new system is supposed to rely primarily on radar and not just cameras. Furthermore, the new system checks the driver's awareness requiring the driver to park the car and restart if the system's audible alarm to take control of the steering wheel is ignored more than three times in an hour. According to media reports, this new feature addresses criticism that Tesla's autopilot had previously lured drivers to believe that no human control was required when using the autopilot function.

Roundup: Defeat devices remain in spotlight

- The US District Court of the Northern District of California granted preliminary approval of a settlement agreement with private plaintiffs in the United States to resolve civil claims regarding Volkswagen and Audi cars with a two-liter diesel engine. Under the terms of the settlement, eligible plaintiffs will be able to either (i) return their car or (ii) keep their vehicle and receive an update. Furthermore, they will receive a cash payment.
- A Volkswagen engineer admitted to helping develop the defeat device that led to the above-described settlement and pleaded guilty to conspiring to defraud US customers and regulators and agreed to cooperate with US authorities.
- The California Air Resources Board rejected a technical fix offered by Volkswagen Group for Audi, Porsche, and Volkswagen cars equipped with a three-liter diesel engine.
- South Korea's ministry for the environment canceled the certification of 83,000 Volkswagen group vehicles in Korea and imposed a fine of 17.8 billion won (\$16 million) for falsifying documents on emissions and noise-level tests.
- Renault has offered to hand over the software code on its diesel engines to authorities to prove that they do not contain a defeat device after its vehicles showed significantly higher emissions of nitrogen oxides on the road than in official tests. A committee of the British Parliament has criticized its Department of Transportation for reacting too slowly to revelations that more than 1.2 million cars in the United Kingdom were fitted with a defeat device.



INTELLECTUAL PROPERTY

Rebranding Saab automobiles

The assets of Saab's automotive division were acquired out of bankruptcy by National Electric Vehicle Sweden (NEVS), a Swedish firm with Chinese backers, in 2011. The Saab mark for cars subsequently produced by NEVS lived on for a period through license agreements with the owners of the mark, including the Saab defense company. However, going forward, NEVS reports that future cars will be sold under the NEVS mark, ending decades of car sales under the well-known Saab trademark.

3M Company receives favorable patent verdict

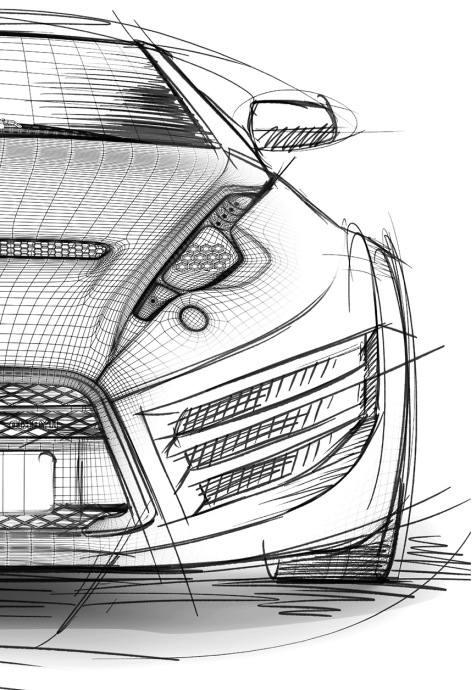
3M Company reported a favorable decision in an injunction proceeding from the District Court of Frankfurt, Germany, based on alleged patent infringement by Qingdao Summit Industrial Co. Ltd. The European patent at issue relates to technology that facilitates the efficient mixing and spraying of coatings for automotive collision repair. The decision is reported to prohibit Qingdao's sale of paint spray gun cup sets in Germany and to require reimbursement of the litigation costs to 3M. Qingdao has an opportunity to appeal to the Upper District Court of Frankfurt. Germany has become a popular venue for patent litigation following several high-profile patent cases there involving smartphones and well-known smartphone manufacturers including Apple, Samsung, and Motorola. This trend is expected to continue.

Right to repair high-tech products

NBC News has completed a three-part series on the right to repair products and aspects of the copyright laws that limit the ability to repair high-tech products. The series has drawn attention to the increased use of software in vehicles and other products, which require special tools for diagnosis and repair. It also highlights "anti-circumvention" aspects of the US Digital Millennium Copyright Act, which prohibits defeating software protection mechanisms found in products, even if the purpose is to debug or fix defective or malfunctioning software on the product. The Repair Association and The Electronic Frontier Foundation, among others, are advocating legal changes in the application of copyright laws and policy changes to benefit the repair industry.

Brexit endangers the European Unitary Patent System

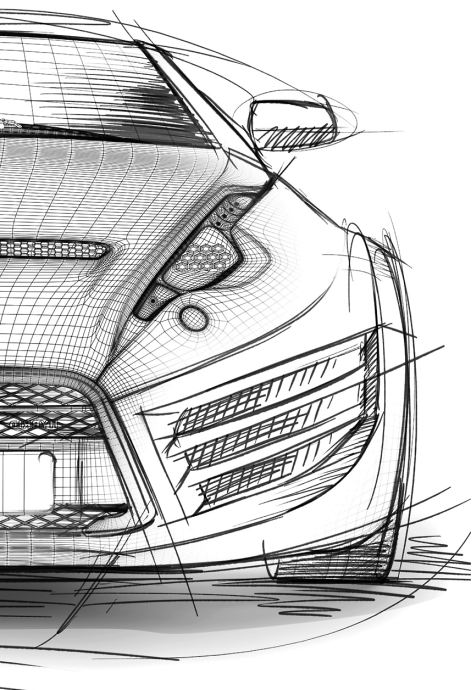
The European Unitary Patent System that was supposed to start next year and that would have automatically validated a single patent in all signatory countries has been endangered by the United Kingdom's decision to leave the EU. In light of the close connection between the new system and EU law, it is widely believed the UK will not ratify the Unified Patent Court Agreement that is a key component of the new system. London was supposed to host one of the three courts under the new system.



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 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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