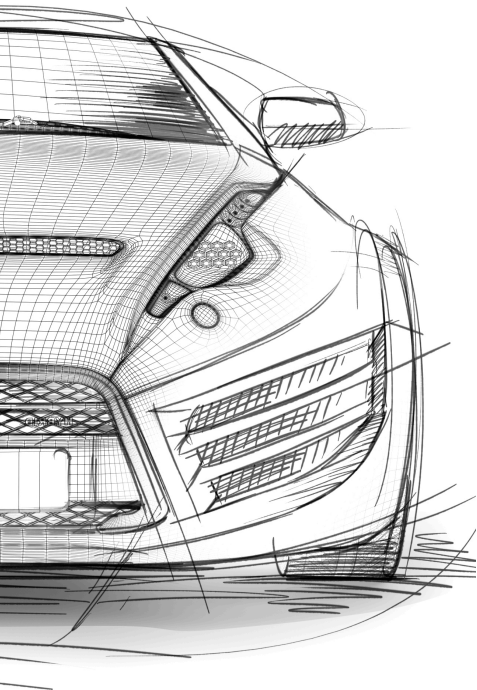


# AUTOMOTIVE

Q1 / 2017

This is the 11th issue of our newsletter on developments in the automotive industry, published by Morgan Lewis's automotive team with contributions from around the globe by leveraging the experience of lawyers in our 30 offices. We counsel our automotive clients on a broad range of industry-specific matters, including mergers and acquisitions, antitrust, litigation, regulatory concerns, intellectual property, and labor and employment.

This issue of *Morgan Lewis AUTOMOTIVE*, which covers the first quarter of 2017, touches on topics 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 [www.morganlewis.com](http://www.morganlewis.com).



## IN THIS ISSUE

**Mergers & Acquisitions:** PSA Group to acquire Opel from GM; Intel to acquire Mobileye for \$15 billion; Tata and Volkswagen to cooperate in India; GM and Honda to jointly manufacture components of fuel cell systems; Toyota and Ford to cooperate on open software standards for the interaction between smartphones and vehicles; Audi to acquire Silvercar; ZF acquires stake in Astyx Communications & Sensors; Sumitomo Rubber to acquire UK tire distributor Micheldever; Intel and NavInfo to acquire minority shareholdings in HERE; Panasonic to acquire an additional stake in Ficosa International SA; and Japanese JTEKT Corporation to acquire stake in Sona Koya Steering Systems.

**Antitrust:** China's National Development and Reform Commission (NDRC) to increase antitrust enforcement efforts in 2017; European Commission fines car air-conditioning and engine-cooling cartel; Japanese executive pleads guilty to obstructing justice; Kieckert to plead guilty for bid-rigging in auto parts probe; Shenzhen Autel settles litigation with GM, files lawsuit against Ford Motor (China) Inc. in China; and Mitsubishi fined for manipulation of fuel consumption data in Japan.

**Regulatory:** Takata Corporation agrees to plead guilty in defective airbags case; National Highway Transportation Safety Administration (NHTSA) closes investigation into crash by autopilot system; California to loosen regulations for testing driverless cars; Trump administration to review Obama's self-driving car guidance; and Roundup: Recent defeat device developments.

**Intellectual Property:** Microsoft licenses connected-vehicle patents to Toyota; and GM identifies wireless car technology needs to FCC.

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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

## **PSA Group to Acquire Opel from GM**

PSA Group announced its acquisition of the European car business of General Motors consisting of the OEM brands Opel (Germany) and Vauxhall (United Kingdom) for €1.3 billion (\$1.42 billion). The transaction will position PSA as the second largest OEM in Europe behind Volkswagen, and marks GM's exit from the European car market after its continued presence of more than 85 years. Further, PSA will acquire GM's European financing business, GM Financial, for €900 million (\$980 million) together with BNP Paribas. The parties intend to close the transaction by the end of 2017.

Meanwhile, France announced it would sell its shares in PSA to French bank Bpifrance for €1.92 billion (\$2.1 billion). The French government acquired the stake in PSA in 2014 when PSA was facing economic challenges.

## **Intel to Acquire Mobileye for \$15 billion**

Intel announced its proposed acquisition of Israeli assisted-driving systems supplier Mobileye for \$15 billion. The acquisition is Intel's second largest in the company's history. Mobileye develops semiconductor chips and cameras that are installed in approximately 15 million cars built by 25 different car manufacturers globally. Mobileye's products detect potential hazards and provide warnings to drivers to avoid collision with vehicles, pedestrians, and other objects. This transaction is the latest move by technology companies investing in the automotive sector, and follows Qualcomm's acquisition of NXP, Sofbank's acquisition of chip company Arm Holdings, and Samsung's acquisition of Harman, all within the last year.

## **Tata and Volkswagen to Cooperate in India**

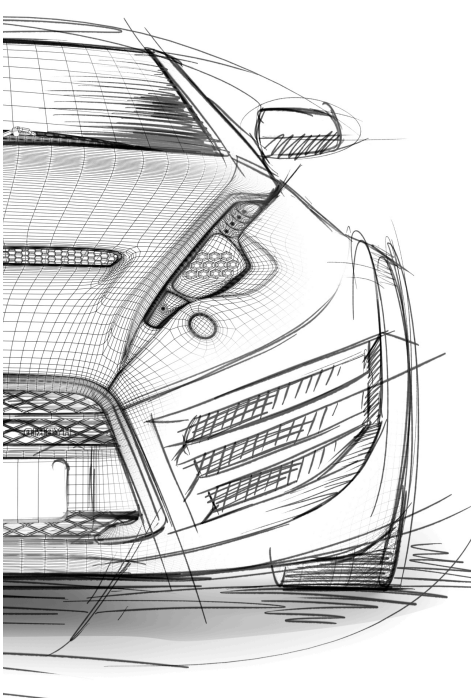
Volkswagen and Tata signed a letter of intent regarding the development of vehicle components and the distribution of vehicles in emerging markets, including India. Volkswagen brand Skoda, which specializes in the production of moderately priced cars, will be the project manager on the Volkswagen side.

## **GM and Honda to Jointly Manufacture Components of Fuel Cell Systems**

GM and Honda Motor entered into a joint venture to manufacture components for hydrogen fuel cells in the United States. The agreement aims to lower the high costs associated with the production of fuel cell systems through economies of scale and components sharing. Honda will thus transfer its production of fuel cell systems from Japan to GM's existing production facility in Brownstown, Michigan, creating approximately 100 jobs. GM and Honda expect to begin production in 2020. The joint venture also includes the setting up of fueling stations for hydro-electric powered cars.

## **Toyota and Ford to Cooperate on Open Software Standards for the Interaction between Smartphones and Vehicles**

Toyota and Ford formed a consortium to develop an open software standard for the interaction between smartphones and cars. The two companies intend to create an alternative to respective solutions offered by Apple (Carplay) and Google (Android Auto). Other members of the consortium include PSA, Mazda, Subaru, and Suzuki. The software is based on a Ford development and is expected to be applied in 2018.



# MERGERS & ACQUISITIONS

## **Audi to Acquire Silvercar**

Audi announced it would acquire all of the shares of Silvercar, a car rental company, which operates a fleet of silver Audi A4s at 15 locations in the United States and uses an on-demand app to communicate with its customers. Audi already holds a minority participation in Silvercar.

## **ZF Acquires Stake in Astyx Communications & Sensors**

ZF has acquired a 45% stake in German radar sense technology Astyx Communications & Sensors. Astyx is a manufacturer of radar sensors and other components for the automotive and other industries. ZF and Astyx intend to jointly develop the next generation of radar sensors.

## **Sumitomo Rubber to Acquire UK Tire Distributor Micheldever**

Sumitomo Rubber Industries agreed to acquire UK tire distributor Micheldever for £215 million (\$276 million) from Graphite Capital. Micheldever is the second largest tire distributor in the United Kingdom.

## **Intel and NavInfo to Acquire Minority Shareholdings in HERE**

Intel and a consortium of Chinese mapping company NavInfo, Chinese internet provider Tencent, and Singaporean state-owned fund GIC will acquire minority shareholdings in mapping company HERE. German OEMs Audi, BMW and Daimler acquired HERE from Nokia in 2015 to jointly develop mapping systems for autonomous driving. Intel will contribute to the development of the relevant technologies for autonomous driving. NavInfo is active in developing mapping systems in China where HERE has not been active prior to NavInfo's investment.

## **SAIC HK to Acquire GM Assets in India**

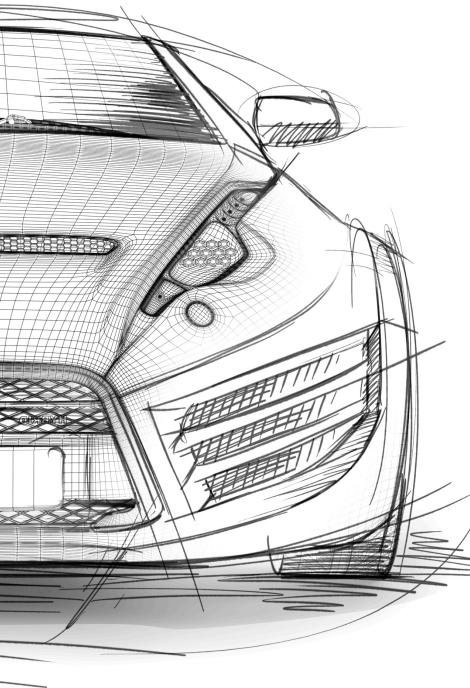
SAIC HK, an affiliate of Shanghai Automotive, and GM entered into an agreement under which SAIC HK will acquire selected assets from a GM plant in Halol, India. GM intends to close this manufacturing site by the end of April, consolidating its manufacturing activities on its production site in the Indian city of Talegaon.

## **Panasonic to Acquire Additional Stake in Ficosa International SA**

Panasonic announced that it will become the controlling shareholder of automotive supplier Ficosa International SA with its acquisition of an additional 20% of Ficosa's shares from Ficosa Inversion SL. The target company is active in the production of electronic automotive mirrors and other safety systems.

## **Japanese JTEKT Corporation to Acquire Stake in Sona Koya Steering Systems**

Auto parts manufacturer JTEKT announced it would acquire an additional 25% of the shares in Sona Koya Steering Systems from Indian Sona Group. Sona is one of the largest manufacturers of automotive steering systems in India.



# ANTITRUST

## **China's NDRC to Step Up Antitrust Enforcement in 2017**

China's National Development and Reform Commission has announced it would initiate more investigations as part of its effort to increase antitrust enforcement in 2017. The pharmaceutical and automotive industries have been under increased scrutiny in 2016 by Chinese antitrust enforcers with respect to monopolistic practices, cartels, and resale price maintenance.

## **European Commission Fines Car Air-Conditioning and Engine-Cooling Cartel**

The European Commission imposed €155 million (\$169 million) in fines on six suppliers of car air-conditioning and engine-cooling suppliers for their participation in various cartels regarding the supply of components to certain OEMs in Europe. According to the commission, Behr (Germany), Calsonic (Japan), Denso (Japan), Panasonic (Japan), Sanden (Japan), and Valeo (France) engaged in price-fixing, market allocation, and exchange of competitive sensitive information in four different cartels for up to five years.

## **Kieckert to Plead Guilty to Bid Rigging in Auto Parts Probe**

German automotive supplier Kieckert agreed to plead guilty in the US Department of Justice's probe into bid rigging, sales allocation and price fixing of side-door latches and latch mini modules sold to Ford Motor Company in the United States between September 2008 and May 2013. Kieckert also agreed to pay a criminal fine of \$6.1 million.

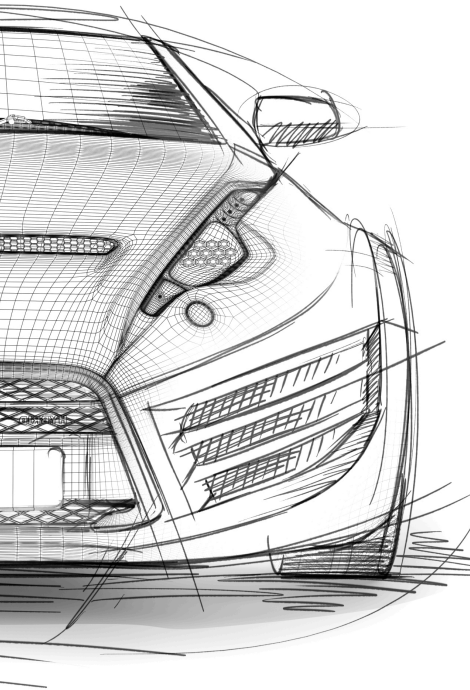
## **Shenzen Autel Settles Litigation with GM, Files Lawsuit against Ford Motor (China) Inc. in China**

GM and Shenzen Autel, a supplier of diagnostic tools in the automotive after-sales market, entered into a \$14.2 million settlement ending Shenzen Autel's lawsuit in Chinese courts against GM for the refusal to license certain technical information in the after-sales market for GM vehicles on a fair, reasonable, and non-discriminatory basis, as well as applying strict control on its trading partners in such after-sales market.

In a presumably similar legal action, Shenzen Autel filed a complaint against Ford Motor (China) Inc. and Shenzen Boxini Technology Co. at the Shenzen Intermediate People's Court.

## **Korea's Federal Trade Commission Fines Denso and NGK**

Korea's Federal Trade Commission imposed \$1.5 million in fines against automotive suppliers Denso and NGK for price fixing in a tender by GM for oxygen sensors to be installed in car engines during September and July 2008. Some of the affected engines, as well as some of the cars in which the affected engines were installed, were manufactured in Korea.



# REGULATORY

## **Takata Corporation Agrees to Plead Guilty in Airbag Recall Case**

Takata Corporation agreed to plead guilty to wire fraud in the distribution of malfunctioning airbags. The US Department of Justice alleged that Takata repeatedly falsified airbag test data regarding the safety of its products. Takata agreed to pay a criminal penalty of \$1 billion, including a restitution of \$975 million and a \$25 million fine. Three Takata executives were also indicted on wire fraud charges in the Eastern District of Michigan.

## **NHTSA Closes Investigation into Crash by Autopilot System**

The National Highway Traffic Safety Administration (NHTSA) closed its investigation into the fatal crash of a Tesla Model S running on autopilot without taking any action. NHTSA found no defects in the autopilot system and did not see a need for Tesla's autopilot-enabled vehicles to be recalled.

## **California to Loosen Regulations on Testing Driverless Cars**

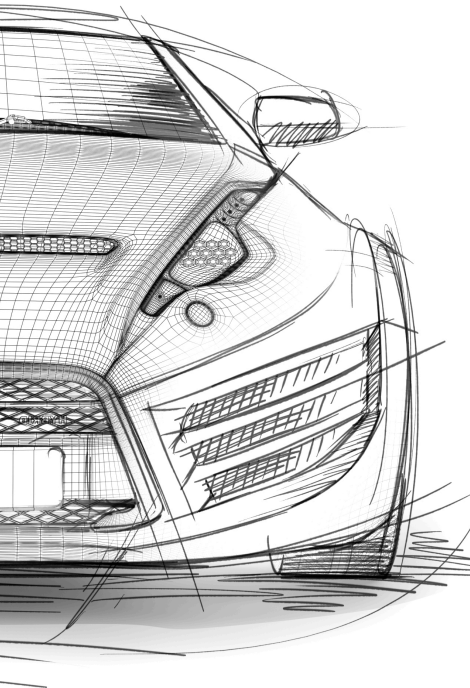
California announced plans to loosen restrictions on testing autonomous driving systems. The state Department of Motor Vehicles (DMV) said regulations are scheduled to be implemented before the end of this year to no longer require manufacturers to test cars with an additional driver behind the wheel. Further, the DMV will no longer require self-driving cars to be tested for one year on public roads before they are marketed to consumers.

## **Mitsubishi Fined for Manipulation of Fuel Consumption Data in Japan**

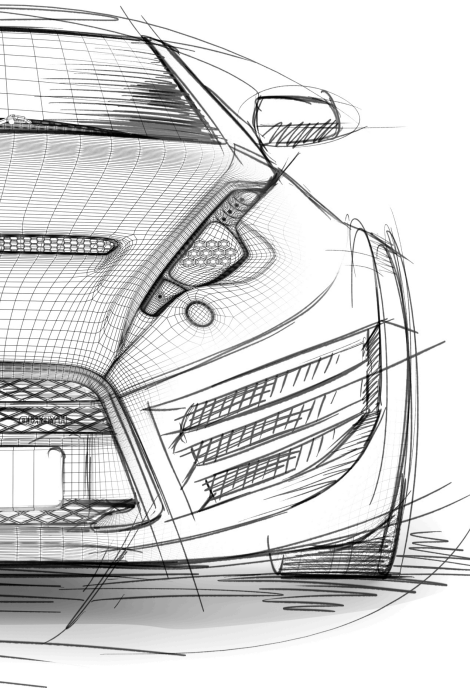
Japan's Consumer Affairs Agency imposed \$4 million in fines against Mitsubishi Motors for the falsification of fuel consumption data for mini vehicles (cars with less than 660 cubic-centimeter engines). The fuel consumption was up to 16 % higher than claimed by Mitsubishi.

## **Roundup: Emission Rules Compliance Remains in Spotlight**

- Volkswagen pleaded guilty to conspiring to defraud the United States and the company's US customers by selling approximately 590,000 diesel vehicles using a device to manipulate the emissions tests by US Environmental Protection Agency (EPA) and the California Air Resources Board (CARB). As part of the plea, Volkswagen paid a \$2.8 billion criminal fine. The Eastern District of Michigan indicted six Volkswagen managers for their roles in the conspiracy. Volkswagen also paid \$1.5 billion in civil penalties to settle both the EPA's civil claims against Volkswagen for the import and sales of these vehicles and the US Customs and Border Protection's claims for customs fraud. Volkswagen agreed to an independent monitor for three years to implement several audit and compliance mechanisms.
- EPA has launched an investigation into Fiat Chrysler alleging violation of the Clean Air Act by installing and failing to disclose software that increases air pollution in 2014-2016 Jeep Grand Cherokee and Dodge Ram 1500 vehicles with 3.0 liter diesel engines distributed in the United States. Besides EPA, the US Department of Justice, the US Securities and Exchange Commission, and several state attorneys general are looking into the issue.



# REGULATORY



- The Seoul Central District Prosecutor's Office indicted seven current and former managers of Volkswagen in South Korea, including the head of Audi Volkswagen Korea. The accusations include falsifying emissions documents, manipulation of noise emissions reports, tampering with computer software to receive relevant certifications to operate the vehicles in South Korea, and the violation of certain environmental laws. A draft report by a European Parliament Committee to investigate the Commission's and the EU Member States Authorities' roles and performance in checking the compliance of OEMs with applicable emission standards accused both the Commission and the Member States Authorities of "maladministration."
- The US District Court for the Northern District of California approved Volkswagen's settlement with 650 US dealers with respect to the diesel emissions violations. The Volkswagen dealers will each receive \$1.85 million, for a total settlement value of approximately \$1.21 billion.
- The US District Court for the Northern District of California has granted preliminary approval of a settlement between Volkswagen and the US Department of Justice on behalf of EPA, CARB, the California Attorney General, the US Federal Trade Commission, and current and former owners of 3.0 liter diesel vehicles. The settlement related to approximately 80,000 cars, including 22,000 Volkswagen, 47,000 Audi, and 11,000 Porsche vehicles. Volkswagen agreed to buy back or fix the vehicles and/or compensate the relevant consumers. The total settlement is valued at approximately \$1.26 billion.
- Luxembourg initiated a criminal investigation over Volkswagen's diesel vehicle emissions to identify an unknown person responsible for the company's defeat device.
- The French Competition, Consumer and Antifraud Authority has submitted its report on PSA's and Fiat Chrysler's alleged diesel emissions manipulation to the Paris Public Prosecutor, who may now decide whether to open an investigation against the company. The authority has also initiated an inquiry into Renault for manipulating emissions tests since the 1990s. Meanwhile, it has closed its investigation against Opel, saying it has not found any evidence of fraud.
- Volkswagen has agreed to settle claims over the diesel emissions manipulation with 10 US states for approximately \$157 million.
- Volkswagen said it has received approval from EPA for its dealers to sell 2015 diesel engine vehicles after Volkswagen updated the model's emissions software and made changes to the diesel engine's hardware.
- Stuttgart's Public Prosecutor's Office initiated an investigation against several employees of Daimler, accusing them of fraud and criminal advertising (strafbare Werbung) in the context of possible emission violations.

# INTELLECTUAL PROPERTY

## Microsoft Licenses Connected-Vehicle Patents to Toyota

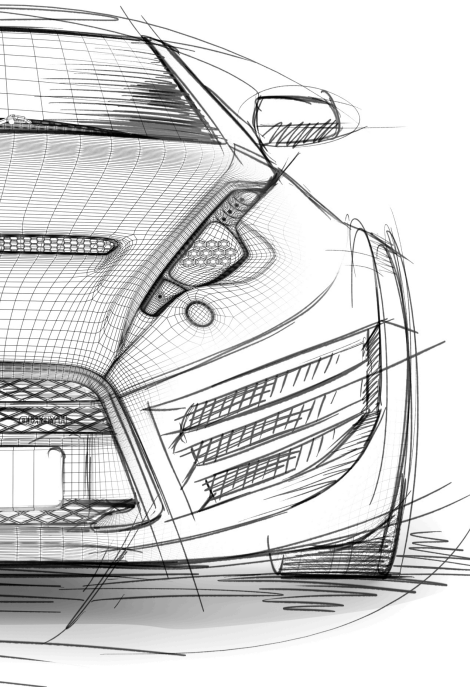
Microsoft announced a license to Toyota Motor Corp. under a batch of its vehicle-related patents. The deal is reported to be non-exclusive and to provide access to vehicle-related operating system, voice recognition, gesture control, artificial intelligence and cybersecurity tools. Financial terms of the deal have not been disclosed. Microsoft is reportedly looking for other automotive partners to roll out its vehicle technologies and has already been working with Toyota on connected-car technology. "Through this patent partnership between Toyota and Microsoft, we will be able to innovate faster to deliver new, contextual, and immersive experiences to our customers," said Tokuhisa Nomura, executive general manager of Toyota's Advanced R&D Engineering Company, in a statement.

## GM Identifies Wireless Car Technology Needs to FCC

In filings posted on discussions with FCC Chairman Ajit Pai and his senior counsel, Nick Degani, GM addressed shared wireless spectrum for allowing vehicles to communicate with each other, and an FCC rule change for "short-range radar" used to detect objects by autonomous vehicles. Making sure so-called dedicated short-range communications services aren't harmed by interference from any move deploying unlicensed Wi-Fi in the 5.9 gigahertz band appears to be important, as is having standards in place regarding the spectrum. The 76-91 GHz band is another candidate for short-range radar, which is an important safety component for autonomous driving, especially in densely populated urban environments.

## Supreme Court Case Could Change Rules for Filing Patent Cases

The US Supreme Court has heard a patent case between two food companies that may benefit the automotive industry and its technology suppliers. The case, *TC Heartland LLC v. Kraft Foods Group*, relates to where patent owners can bring a lawsuit. Currently, the suit can be brought in any jurisdiction where the defendant does business. This has resulted in a high percentage of cases being filed in the Eastern District of Texas, perceived to be a plaintiff-friendly venue. Depending on the outcome of the *TC Heartland* case, venue could be more restricted, leading to more lawsuits against automotive companies closer to home in the Eastern District of Michigan, or popular places of incorporation, such as Delaware.

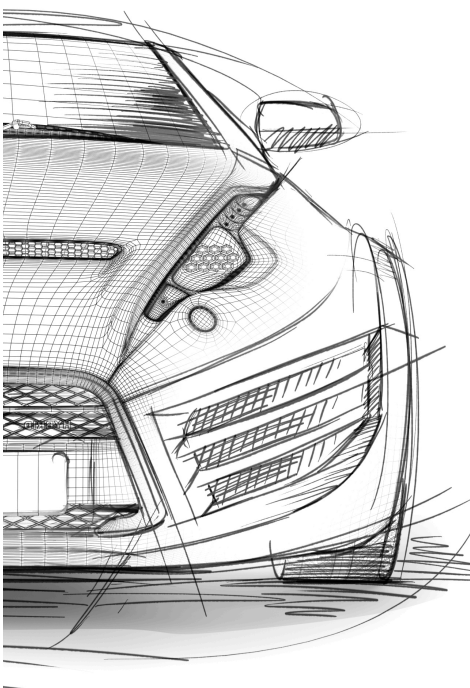


# MORGAN LEWIS'S AUTOMOTIVE TEAM

Our automotive team partners with global automotive companies in complex transactions, building and protecting their IP portfolios, as well as crafting and implementing customized 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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