

Key considerations for autonomous vehicle IP

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Posted: 1 Feb 2017

<http://www.automotiveworld.com/analysis/key-considerations-autonomous-vehicle-ip/>

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Autonomous vehicle development is exposing the auto industry to new tech and new industry players. With automotive patent litigation already on the rise, the stage is set for close examination of IP law. Foley & Lardner's Pavan Agarwal explains

Autonomous vehicle and connected car technologies are disrupting the automotive market, redefining how we travel on roadways and what we do whilst we are travelling. That redefinition also likely means some restructuring of the automotive market.

Industry players need to be acutely aware of the expansion of competition, which includes not only traditional automotive OEMs, Tier 1s and Tier 2s, but also technology companies large and small. The traditional supply chain is facing significant changes, and indeed may be completely revamped in years to come.

For many companies, their most valuable asset in these advanced technology areas is intellectual property (IP). The relatively green space presents huge opportunities for companies to capture and protect market share through offensive IP strategies.

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At the same time, companies need to defend against IP of an expanded list of competitors. That longer list represents specialists in hardware (e.g. processors, sensors, displays), software (e.g. artificial intelligence and apps), system design, and everything in-between. In many instances, the development of individual components, and especially multi-component products, is done through collaboration, or at least integration of technology from a number of players.

An initial step is taking inventory of the IP, with mechanisms in place for recognising new IP. Company guidelines for capturing IP and deciding how to protect it are key. Some popular forms of protection include patent rights, trade secret rights, and copyright rights.

Beyond this initial step, companies must evaluate two important areas. The first relates to IP ownership from collaboration, and the second to responsibility for defending against claims made by IP owners. For IP ownership, the transactional agreements need to address the ownership and license rights of IP that emerges from such development efforts.

There are several key questions for consideration. For example, who will formally own the IP, and what rights, such as license rights, will the other company enjoy? Should one of the companies get rights for later improvements made by the other if they were made outside the period of collaboration? Should the companies be willing to give rights, whether ownership or license rights, in the background IP that each company brings to the table? And what right does each company have to veto granting of license rights by the other, as well as when one company wants to bring a formal action against a third party?

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On the defensive side, when an IP owner threatens or brings a formal action, companies often turn to suppliers that developed, or co-developed, the technology at issue. Complications occur when the assertion is made against a combination of hardware and software, each developed by different companies, or products that integrate multiple components from different companies. Supply agreements may become key in pinpointing who will be truly responsible, and their scope of liability. At the same time, companies need to be cognisant of their supplier's ability to pay.

Automotive patent litigation is on the rise in the US, with promoting factors including the overall health of the market and incorporation of computing and communication technologies. Non-practicing entities (NPEs) have shown a real interest in the automotive market. Companies can rely on practices and strategies from computer and smartphone IP litigation to help defend against such attacks.

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