



# THINK FORWARD

## Brinks Gilson & Lione Attorney Says Trade Secret Theft Cases Reflect A Ferocious Race To Be First In The Autonomous Vehicle Space

March 15, 2018

Ann Arbor, Mich. - James K. Cleland, a shareholder in the Ann Arbor office of Brinks Gilson & Lione, one of the largest intellectual property law firms in the U.S., and co-chair of the firm's Automotive Industry Group, says the stakes to be first in the race for autonomous vehicles are creating unprecedented challenges for both the automotive and emerging niche tech industries.

"The race right now to be first in the autonomous vehicle space is ferociously competitive because companies first to market with completely autonomous vehicle technology will be the market leaders, trend setters and profit the most," Cleland said. "In addition to traditional passenger car and truck OEMs driving hard to implement autonomous vehicle technology, ride sharing companies like Uber and Waymo, along with commercial trucking and delivery vehicle companies, are expending large quantities of resources to put autonomy on the road, too."

Cleland notes there are many different technologies vying to be the standard for the industry, including in the areas of sensor technology (LIDAR, ultrasonic and cameras) and data collection and sharing (V to V, V to C, V to X). Automotive companies are generally picking a horse and riding it as hard as possible to be the first to the finish line. He says the race is leading to some unlikely partnerships and strange bedfellows in the autonomous vehicle space.

"I see the Waymo v. Uber case, with alleged trade secret theft of autonomous vehicle LIDAR technology valued by Waymo at \$1.9 billion, as an example of this phenomenon," Cleland said. "The stakes for Uber to be the first ride sharing company with a fleet of autonomous vehicles are enormous, and this is demonstrated by the Waymo v. Uber case."

Cleland says intellectual property plays a key role in how companies in the autonomous vehicle space go about protecting their new technology.

"Patents tend to be used to protect most of the technology we see in vehicles because they are public, searchable documents," Cleland said. "Trade secrets tend to exist more behind the scenes, but they are equally as important from both an offensive and defensive standpoint."

From an enforcement standpoint, Cleland explains that autonomous vehicle technology relies heavily on both data and artificial intelligence/software. Data will come from various sources, including the vehicle itself as it drives, other vehicles as V2V communications become a reality and data possessed by cities and municipalities. Who owns the data and what portions of the data will be shared are key questions going forward. Software will likely be the most important component as it directs how an autonomous vehicle navigates not just the roadways and the expected stops and starts presented by traffic lights and stop signs, but all the unexpected objects as well, such as pedestrians, delivery trucks and parked cars.

“Software is often the crown jewel and is typically fiercely guarded as a trade secret,” Cleland said.

Manufacturing processes that may present a business advantage are also trade secrets and should be treated as such, according to Cleland. He says with employees at OEMs and the tiered suppliers changing companies more frequently than ever, employers need to go on the defensive.

“Fluid job movement presents an increased risk of trade secret theft, as Waymo v. Uber reflects, and OEMs and suppliers need to be very careful in the screening and hiring process, especially in such a hotly contested and lucrative space as autonomous vehicle technology,” Cleland said.

Several automakers were victims in recent years of high profile, high stakes cases of trade secret theft when foreign nationals they employed fled the U.S. and returned to their native countries with valuable trade secrets in hand. The Defend Trade Secrets Act (DTSA) of 2016 upped the judiciary protections against trade secret theft and provided federal courts with jurisdiction over trade secret cases, enhanced the civil seizure procedures and beefed up damages.

Cleland says while the DTSA helps wronged companies pursue former employees across state and international borders, we are now seeing the dangers of intra-country trade secret theft as with Uber and Waymo.

There is no question the explosion of autonomous vehicles and ridesharing have reinforced the importance and value of trade secrets and other forms of intellectual property in automotive, especially as the industry takes on alliances and partnerships with the tech industry and other upstarts,” Cleland said.

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