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INSIGHT: The Future of Automotive Trade Secret Litigation



BY MICHAEL SUMMERSGILL AND ARTHUR COVIELLO

This is the final article in a series of five articles authored by WilmerHale lawyers discussing how the emergence of IoT technologies will impact the automotive industry. The previous articles included: “The Developing Landscape of Internet of Things Standards for Cars,” “Internet of Vehicles Technologies as Patentable Subject After Alice,” “What to Expect in Licensing and Litigation as the Internet of Things Comes to the Automotive Industry” and “Monitoring Mobility—The Current and Future Regulatory Landscape for Advanced Automotive Tech.”

I. Introduction Trade secret litigation is quickly becoming a key new battleground in the automotive industry. This new trend is consistent with an overall surge of trade secret litigation in U.S. federal courts. Since the passage of the Defend Trade Secrets Act in 2016, trade secret litigation has increased by 30 percent. Moreover, in the last 30 years, trade secret litigation in U.S. federal courts has grown exponentially, doubling nearly every ten years. These trends are particularly important for the automotive industry, which is experiencing rapid technological advancements that create the potential for increased trade secret disputes.

The increasing importance of trade secret litigation in the automotive industry is being driven by a variety of factors, including the convergence of many new technologies onto the automotive platform, the entry of new technology companies into the automotive market, the increased mobility of employees jumping to new automotive technology companies, and a growing number of partnerships between automotive companies and technology companies. This emerging web of new commercial relationships for developing new automotive technologies, such as autonomous driving and electric motors, increases the likelihood of trade secrets being

shared or taken without authorization, leading to even more trade secret litigation.

This article addresses two recent cases that highlight the trends toward more trade secret litigation in the automotive industry.

II. Eagle Harbor v. Ford In *Eagle Harbor Holdings LLC et al. v. Ford Motor Co.*, No. 3:11-cv-5503 (W.D. Wash.), the plaintiff sued Ford for alleged infringement of eleven patents related to collision avoidance and infotainment technology and sought over \$750 million in damages. During discovery, Ford learned that the plaintiff had improperly obtained confidential Ford technical documentation from one of Ford’s suppliers and that the plaintiff had used that documentation to craft patent claims that it was asserting against Ford. Based on this discovery, Ford brought counterclaims for trade secret misappropriation. At trial, Ford defeated all of the plaintiffs’ patent claims, and Ford also prevailed in its trade secret misappropriation claim. WilmerHale represented Ford in this litigation.

This case highlights the risks that automotive manufacturers face due to the complex chain of suppliers involved in making the myriad technical components used in cars—a chain that is becoming more complex as the number of technologies and technology partners increases. Automotive manufacturers often must share confidential information and technical specifications with suppliers, subject to confidentiality restrictions, so that the suppliers can produce the appropriate components. This, however, raises the risk that the automotive company’s trade secrets, such as those contained in Ford’s technical specifications, will be misused. Accordingly, the right trade secret strategy is critical to protecting automotive manufacturers and enabling them to efficiently source automotive components from suppliers around the world. In this case, Ford successfully

used trade secret protections as a key part of its overall trial strategy—and turned a defensive patent case with hundreds of millions in damages exposure into a decisive offensive win.

III. *Faraday & Future Inc. v. Evelozcity* In *Faraday & Future Inc. v. Evelozcity Inc.*, 2:18-cv-00737 (C.D. Cal.), Faraday, an electric car company, brought a complaint for trade secret misappropriation against its competitor Evelozcity. Founded in 2014, Faraday is a relatively new entrant to the automotive manufacturing market and is preparing to release its first production vehicle -- the “FF-91.” According to Faraday’s complaint, the FF-91 has 1050 horsepower and can go from zero to 60 miles per hour in 2.39 seconds. Faraday’s complaint alleges that Evelozcity stole Faraday’s trade secrets regarding artificial intelligence (“AI”) electric vehicle technologies that Faraday developed based on over \$1 billion in research and development. Faraday alleges that multiple former employees, including Faraday’s former chief financial officer and chief technical officer, left to form Evelozcity in 2017. Faraday also alleges that multiple former employees of Faraday took trade secrets, including confidential Faraday technical documents, when they left for Evelozcity. In August 2018, Evelozcity filed an answer denying Faraday’s trade secret allegations and asserting multiple affirmative defenses. On December 12, 2018, the case was dismissed after the parties executed a settlement agreement.

This case highlights the trade secret risks that can arise in the automotive industry due to the increased mobility of employees jumping to new competitors. With many new entrants to the automotive market, including start-up companies both in the U.S. and China, key employees have more options to jump to a competitor. As a result, there are increasing risks that employee mobility will lead to more trade secret disputes like the one between Faraday and Evelozcity.

IV. Conclusion and Recommendations With many new technologies being developed for the automotive platform and many new companies competing to develop those technologies, there are increased risks of trade secret disputes in the automotive industry. Auto-

otive companies should therefore develop or update their trade secret strategies and policies to address these risks. Among other things, automotive companies should consider the following steps to prepare for potential trade secret litigation:

- Work with counsel to maintain an up-to-date categorization of the company’s most valuable trade secret information. As part of this process, companies should develop procedures and policies for determining which new technologies to protect as trade secrets and which technologies to attempt to patent.

- Ensure that the company’s trade secrets are being protected by appropriate safeguards, including employee confidentiality agreements, restrictions on access, encryption, and appropriate confidentiality and/or trade secret designations on documents containing trade secret information.

- Develop trade secret policies for employee onboarding to ensure that new hires do not bring trade secrets with them from prior employers that could expose the company to trade secret liabilities. Among other things, new employees should sign agreements confirming that they have not brought with them any trade secret information from any prior employer.

- Develop trade secret policies for working with automotive technology suppliers—both to ensure that the company’s trade secrets are protected and to reduce the risk of trade secret suits from suppliers or other competitors that use the same suppliers.

By proactively developing such trade secret strategies and policies, automotive companies can mitigate the risks of increased trade secret litigation in a changing technology landscape.

Michael Summersgill is a Partner in WilmerHale’s Boston office who specializes in intellectual property and commercial litigation.

Arthur Coviello is a Special Counsel in WilmerHale’s Palo Alto office who specializes in intellectual property and appellate litigation.