ISRAEL PRACTICE **NEWSLETTER**

SPRING 2018

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Holland & Knight is a U.S.-based global law firm with a strong commitment to the state of Israel. We focus on providing guidance to Israeli investors and companies interested in doing business or making investments in the United States and Latin America. With more than 1,250 professionals in 27 offices, our lawyers and professionals are highly experienced in all the interdisciplinary areas necessary to guide entrepreneurs, investors, and startup or established companies through the opportunities and challenges that arise throughout the business or investment life cycles.

Areas of legal guidance that are typically provided to our Israel Practice clients include real estate, mergers and acquisitions, private equity, international tax, cross border and customs, Internet privacy and cybersecurity, intellectual property, government lobbying, regulations and compliance, U.S. Foreign Corrupt Practices Act (FCPA), U.S. Foreign Account Tax Compliance Act (FATCA), and litigation and dispute resolution.

We invite you to read our Israel Practice newsletter, in which our authors discuss pertinent American-Israeli topics. As Israel has been a crossroads and a prolific source of new ideas for more than 3,000 years, a natural tradition of inventiveness finds its most recent expression in the creation of a technology startup ecosystem with global impact. This newsletter addresses, among other relevant topics, how the innovative technologies and ideas generated in Israel can be deployed in the United States and globally. We invite you to discuss your thoughts on this issue with our authors listed within the document.

מגזין משפטי ללקוחות ישראלים

Holland & Knight הינה פירמת עורכי דין אמריקאית גלובלית בעלת מחויבות עמוקה לשוק הישראלי. אנו מתמקדים במתן שירותי יעוץ למשקיעים וחברות ישראליות המעוניינים להרחיב פעילות או להשקיע בארצות הברית ובאמריקה הלטינית. פירמת עורכי הדין Holland & Knight מעסיקה למעלה מ-1,250 עורכי דין ואנשי מקצוע ב-27 משרדים. לאנשינו ניסיון רב בכל תחומי הפרקטיקה הנחוצים כדי להנחות יזמים, משקיעים, חברות הזנק וחברות מבוססות.

במסגרת הפרקטיקה הישראלית, אנו מעניקים ללקוחותינו יעוץ משפטי בתחומים שונים, לרבות נדל"ן, מיזוגים ורכישות, קרנות השקעה, מיסוי בינלאומי, מסחר בינלאומי ומכסים, פרטיות ואבטחת מידע, קניין רוחני, ייעוץ לוביסטי ורגולטורי, לרבות FCPA, ו- FATCA, סיוע ביישוב סכסוכים עסקיים וליטיגציה.

אנחנו שמחים להזמין אתכם לקרוא את המגזין המשפטי של הפרקטיקה הישראלית. המגזין עוסק בנושאים בעלי חשיבות למשקיעים וחברות ישראליות הפועלים או המעוניינים להרחיב פעילות בארצות הברית ובאמריקה הלטינית. מעמדה של ישראל כצומת דרכים ומקור בלתי נדלה לחדשנות מזה למעלה מ-3,000 שנה, בא לידי ביטוי ביצירת מערכת פורייה של חברות הזנק טכנולוגיות בעלות השפעה כלל-עולמית. מגזין זה עוסק, בין היתר, באופן שבו ניתן להטמיע בארצות הברית וברחבי העולם טכנולוגיות ורעיונות חדשניים שמקורם בישראל. אנו מזמינים אתכם לפנות בכל שאלה שתעלה בנוגע למידע המתפרסם במגזין זה לכותבים שלנו, ששמותיהם מופיעים לצד המאמרים.

The Freedom of U.S. Labor and Employment Law

By Frederick D. Braid

Generally, foreign employers who start operations in the United States find considerably more freedom under American labor and employment laws. The same is true for Israeli employers, even though Israeli labor and employment laws are not as restrictive as those in many eastern European countries. However, in order to preserve the freedom that American laws provide, it is important not to compromise that freedom by bringing old habits to the U.S. before realizing that American laws are considerably more employer-friendly. In other words, don't simply transplant your Israeli operation in the U.S. Consult with experienced labor and employment counsel in advance of starting up before inadvertently waiving important rights.

Although generally offering employers greater freedom, the American system is more complicated because, with respect to some subjects, there may be several layers of applicable laws. Federal law takes precedence, but it can be supplemented by both state and local (e.g., New York City) laws. Thus, in order to assure compliance with all applicable laws, employers must know not only the federal laws that apply nationally but also the state laws in the jurisdictions in which they are operating, as well as, in a few circumstances, the laws of cities that have further supplemented employment law obligations.

The purpose of this brief overview is to make you generally aware of basic differences between American and Israeli labor and employment law, as well as to alert you not to transport your Israeli employment practices to the U.S. without first carefully examining what you might be giving up by doing so.

Employment at Will

The general rule in America is that employment is "at will," which means that it is for no fixed term and can be terminated at any time by either the employer or the employee – with or without notice, and for any or no reason. This contrasts with Israeli law specifying minimum requirements for notice of termination of the employment relationship by both the employer and the employee. It is also in contrast to Israeli law in that termination in the U.S. need not have a specific basis, whereas employees in Israel might have a right to be heard and to have a hearing.

Employer freedom under the employment at will doctrine, however, is not absolute, can vary among states and can be limited by any of the following: 1) employment agreements, 2) collective bargaining agreements, 3) antidiscrimination laws and/or 4) public policy. Generally, state law governs employment agreements; federal law governs collective bargaining agreements; federal, state and local laws govern antidiscrimination requirements; and federal and state law govern public policy restrictions.

Employment agreements are generally reserved for high-level executives, for whom employers compete, rely upon heavily for their success and wish to retain on an ongoing basis. Therefore, in addition to other attractive employment terms, employers are willing to agree to fair notice and just cause restrictions on their ability to terminate such executives. In addition, such agreements will also provide protections for the employer in the form of restrictive covenants related to competition, nonsolicitation of employees and/or customers, and nondisclosure of confidential or trade secret information obtained during the employment relationship. The permissible parameters (i.e., content, geographic scope, duration) of such restrictions are governed by state law and vary from state to state.

Collective bargaining agreements between employers and unions typically include grievance procedures limiting discipline and discharge of employees to situations considered to provide "just cause" for the actions taken. Such procedures usually end with binding arbitration of unresolved disputes before neutrals familiar with such workplace disputes. There is no bright-line formula for "just cause," and the factors considered include the gravity of the offense, the prior disciplinary work history and tenure of the employee.

Employment Discrimination and Other Public Policy Protections

Federal antidiscrimination law protects against discrimination on the basis of age, race, color, sex, religion, national origin and disability. Many state laws add a number of additional protections, including without any limitation intended, marital status, sexual orientation, military status and predisposing genetic characteristics. Some local governments, such as New York City, add even further protected classifications such as gender identity. These additional protections vary among states and local governments, and the threshold employment levels that must be met before the laws are applicable vary among federal, state and local laws.

In addition to the actual prohibited bases of discrimination, employees are protected from retaliation for asserting their rights to such protections. It is, in fact, possible for an employee who fails to prevail on a discrimination claim to succeed on a related retaliation claim. Public policy also protects whistleblowers in various circumstances under both federal and state laws. Again, the scope of such protections varies from jurisdiction to jurisdiction.

Unions and Collective Bargaining

Most U.S. employers have a direct relationship with their employees. Less than 10 percent of the American private sector workforce is unionized. Union density in Israel is somewhere in the 25 percent to 30 percent range and reportedly rising, although still well below the 80 percent density that existed when healthcare was inextricably intertwined with union membership. Significantly, as well, basic management entrepreneurial decisions are not subject to negotiations in the U.S. Accordingly, the American environment provides management, even in unionized settings, with maximum flexibility in dealing directly with its employees solely with respect to the terms and conditions of their employment while retaining considerable managerial flexibility in setting the course of the business.

American labor law has as its underpinning the principle of freedom of contract. Neither the employer nor the union can be compelled to make an agreement in the absence of their own willingness to do so. The parties must, however, as is the case in Israel, bargain in good faith. Economic leverage is the driving force in motivating parties to compromise their differences.

Employee leverage is the threat of or the actual conduct of a strike in order to put pressure on their employers to give in to their demands, but employers are permitted to hire permanent replacements for striking employees in an economic strike over their terms and conditions of employment. Employers, on the other hand, are free to lock out their employees until they agree to return to work on the terms their employer seeks. In addition, employers have the right in limited circumstances to implement unilaterally their last or final proposal in the absence of an agreement with the union.

Employees need not give advance notice of a strike in the U.S. except in the healthcare industry, where a 10-day notice must precede any strike. This contrasts with the Israeli requirement of a 15-day notice before all strikes. In the U.S., the process whereby unions become certified as the legal representative of an employer's employees is heavily regulated. The process is designed to assure employee freedom of choice on the issue of union representation by majority vote in a secret-ballot election following a vigorous exchange of competing management and union views, although alternative procedures are acceptable upon mutual agreement between an employer and a union. The foregoing discussion on union relations applies to the laws governing the vast majority of private sector employers in all industries other than the airline and railroad industries, which operate within a different statutory framework that has some significant differences.

Although this brief overview barely scratches the surface, it should alert employers to circumstances in which it would be wise to inquire further. Please feel free to reach out to Holland & Knight if you have questions on any aspect of the employment relationship, whether addressed in this article or not.

About Our Labor, Employment and Benefits Group

Technological, regulatory and demographic changes – along with globalization – present companies with more challenging decisions than ever before regarding federal and state labor law, employment law and employee benefits. Given the complexity of the current labor climate, building a relationship with one legal team that can guide you through new developments, explain your options clearly and help you to make thoughtful, informed decisions can provide efficiency and stability. Holland & Knight's Labor, Employment and Benefits Group, which exclusively represents management, is up to speed on your industry and can represent you in the United States and abroad in the full range of employment matters that affect your business.

Business Aircraft Ownership: Whole or Fractional?

By Jonathan M. Epstein and Barton W. Morrison


The factors influencing a decision to buy or lease an aircraft have changed dramatically over the last decade, making it increasingly attractive for businesses and individuals who may wish to fly privately. From 2008 to 2012, aircraft producers continued to manufacture aircraft in response to a demand that no longer existed. As a result, the private aviation market experienced an excess supply of private aircraft that led to falling prices. And it remains a buyer's market for many types of aircraft. Also contributing to the buyer's market, financing options that were not available during the economic downturn are now widely available for all types of aircraft and ownership. With prices falling in response to excess supply and credit markets open, the private aircraft market has seen the entry of new purchasers wishing to capitalize on these buyer-friendly market variables. One question being asked by many new purchasers is, "Should I purchase an entire aircraft or a fractional share?"

Fractional Ownership

A number of companies now offer aircraft fractional share ownership and/or lease options. The basic premise is that the buyer purchases (or leases) a fraction of the aircraft, typically 1/8 or 1/16. The fractional owner then has a certain number of annual flight hours based on the fraction of ownership. A typical example is that an owner of 1/8 of an aircraft would be entitled to 100 flight hours per year. Some benefits of fractional ownership include predictable fee structure, guaranteed availability and consistent service (though with larger operators, you are unlikely to fly on your own aircraft). Further, fractional ownership is generally for a five-year term. At the end of the term, the owner may choose to enter a new arrangement for a new aircraft or sell back the share to the operator for the then-market value of the share.

Whole Aircraft Ownership

The full ownership of one aircraft offers the advantage of true freedom of movement, on-demand use, customization and pilot/crew selection. These advantages, of course, come at a cost. While the acquisition costs of private aircraft have fallen, the costs to own and maintain them have either held steady or increased in some cases. Unlike fractional share arrangements, the owner of private aircraft must arrange for crew, maintenance, fuel, hangar space and general upkeep. If an owner is flying 300 or more hours per year, whole ownership may make more sense. In addition, many owners will enter into charter management arrangements to manage the aircraft and, when it is not being used by the owner, to fly the aircraft in commercial charter operations, with the profits from such charter operations being shared between the charter manager and the owner. This can help defray the fixed cost associated with ownership such as pilot salaries, hangar leasing costs and insurance premiums.

Hybrid Arrangements

There are numerous variations.

- Some private aircraft owners may benefit from owning an aircraft, then supplementing lift with a fractional share in a different aircraft type. For example, the owner may own a light, private aircraft but supplement with a fractional share in a larger, long-range aircraft for less common cross-country or international flights.
- Some non-ownership arrangements mimic many aspects of fractional ownership. Two examples are jet card programs (in which the customer buys hours at a set rate) and club memberships.
- In the typical charter management arrangement, the owner pays all costs associated with the aircraft operation (including pilot salaries), but there are managers who offer hybrid-ownership solutions in which the manager will take on certain fixed costs but get to keep all or more of charter revenue.

With whole, fractional or hybrid ownership, the customer/owner needs to carefully consider Civil Aviation Authority of Israel (CAA) and/or Federal Aviation Administration (FAA) regulatory issues, potential tax issues and potential liability exposure in structuring their transactions.

For further information on this topic, please contact Jonathan Epstein or Barton Morrison.

About Our Business Aviation Team

Holland & Knight's Business Aviation Team assists clients in the acquisition and financing of business aircraft. For many owners and operators of business aircraft, buying and selling aircraft is not their primary business and they rely on our team to facilitate the deal. We structure our clients' aviation operations to reduce liability exposure, comply with numerous federal and state regulatory requirements, and take full advantage of tax planning opportunities. Backed by one of the largest aviation practices in the United States, our team can guide you through the myriad legal challenges that arise in this industry and is well-positioned to assist with transactions around the globe.

Successfully Patenting Software in the Age of *Alice*: Why the New Approach Is the Old Approach

By Michael T. Abramson

Many companies, from startups to blue chips, gain a competitive edge by patenting their technology. A well-drafted patent can provide not only up to 20 years of exclusivity for a company's patented invention, but can also act as a substantial deterrent to competitors who might potentially enter that company's domain. If the company is an Israeli startup with proprietary software hoping to entice investor interest, a patent portfolio may even be the key ingredient that secures funding. Unfortunately, recent case law has increased the difficulty of obtaining software-based patents in the United States. Now, more than ever, it is imperative that a patent attorney employ an innovative and revamped patent drafting strategy to maximize the chances of obtaining an issued and valid software-based patent.

Patent Background: The Old Patent Approaches

In the past, a patent attorney drafted a patent application by 1) explaining the problem to be solved, 2) specifically citing publically available documentation (known as "prior art") to describe past approaches to solving the problem, 3) detailing why the solutions provided by the prior art are inadequate, and 4) stating how there is a "need" for the new invention to provide a better solution. Using an overly simplified example, the patent application may read:

"It is well-known that talking on the phone is dangerous when driving, because the driver only has one hand on the wheel. Patent X attempts to solve this problem using a speaker phone. Unfortunately, Patent X still requires the driver to take his or her hand off the wheel to manually answer the phone or dial out. As such, there is a need for a phone that uses voice commands, which has the advantage of enabling the driver to keep both hands on the wheel at all times during the call."

Up until about a decade ago, this was pretty much the standard drafting approach, until case law emerged that rendered this drafting approach risky. The three high-level main takeaways from these developments were: 1) citing a specific prior art reference, like Patent X, could be used to invalidate the company's eventual patent if the description of Patent X is mistakenly inaccurate or misleading, 2) implying that the invention has "advantages" could help an infringer avoid liability if the infringing device either does not necessarily result in each of the described advantages, or if the infringing device does not have one or more of the elements seemingly required to achieve the advantages, and 3) describing the problem to be solved as "well-known," having a need to be solved, or as a seemingly obvious problem, could imply that the solution (i.e., the invention) is also obvious, and therefore unpatentable.

As a result, seasoned patent attorneys who followed the emerging case law changed their approach to drafting patent applications in order to mitigate the risks of invalidation for their clients. Instead of specifically citing and characterizing a prior art reference, the patent application might simply describe how "some known techniques" operate. Instead of identifying specific advantages of the invention, the patent application might avoid the term "advantages" altogether. If the patent uses the term "advantages," it might recite that such advantages are not necessarily required or that other advantages may exist that are not described. Instead of labeling a problem as "well-known" or the solution as "needed," the patent application might altogether avoid stating there is a problem being solved. These changes tended to expedite the issuance of patents, and protect them from being invalidated.

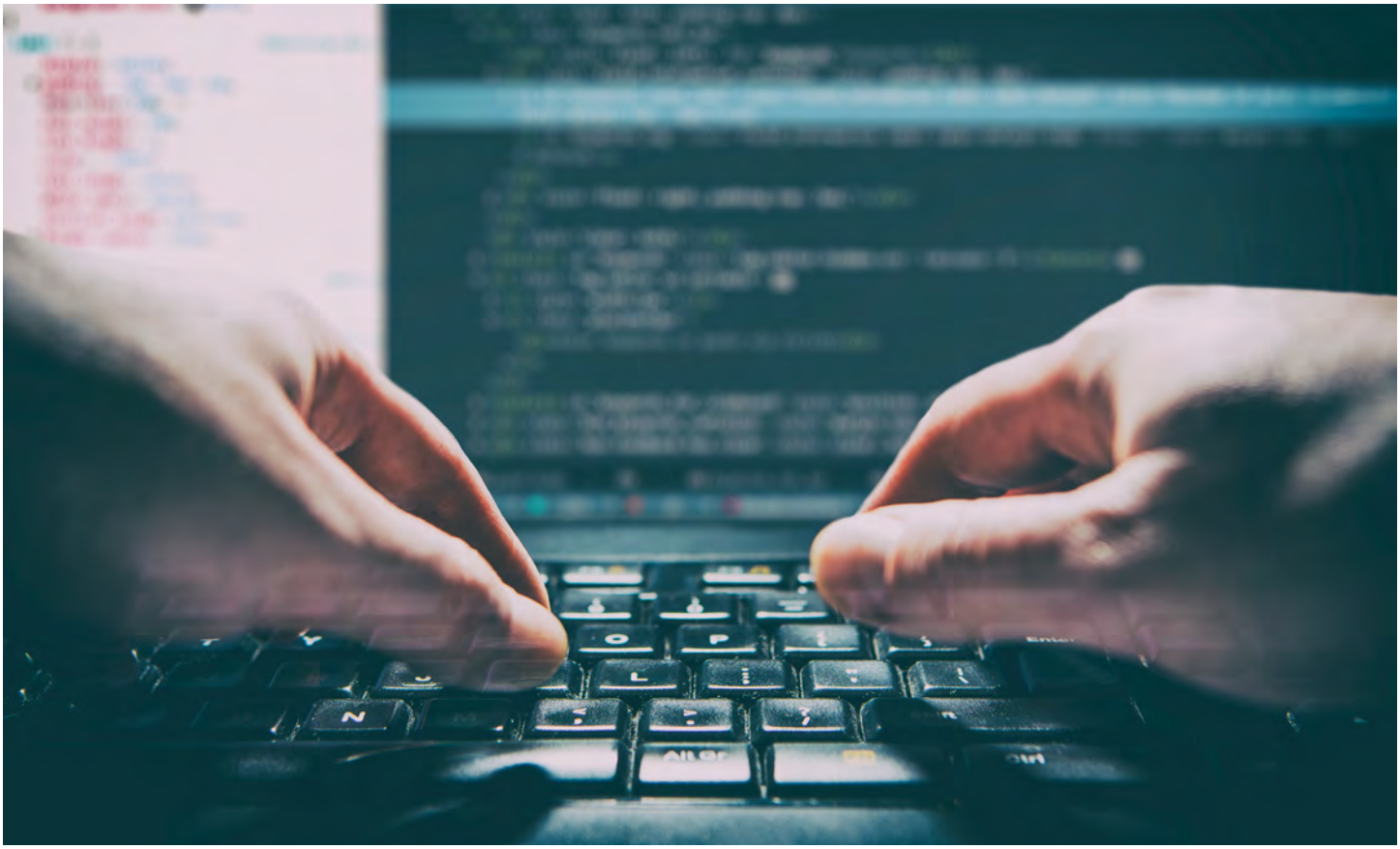
In addition, patentability also required that the invention be directed toward **statutory subject matter** (i.e., anything under the sun that is not solely a law of nature or a natural phenomenon). While it is argued by some that software code by itself is a law of nature and therefore non-statutory subject matter, the easy fix was to claim the software being executed by a computer or tangibly embodied on a non-transitory storage medium, so software-based patents most often met this requirement.

Accordingly, with software-based patents generally considered directed toward statutory subject matter, an invention was generally patentable as long as it was new (novel) and included an inventive step (non-obvious) over the prior art.

Then, on June 19, 2014, the U.S. Supreme Court turned the patent world on its head with its *Alice Corp. v. CLS Bank International* decision (disdainfully referred to by most patent attorneys simply as "*Alice*"), essentially stating that claimed inventions directed to "abstract ideas" without "significantly more," are not patent eligible. The Court's decision describing what constitutes an "abstract idea" or what satisfies the requirement of having "significantly more" is, ironically, fairly abstract. The result of this vague decision is that software-based inventions were, and continue to be, the most susceptible to failing the new standard of patentability, thereby invalidating a vast number of patents and drastically reducing the likelihood that pending applications become patented.

Recent Case Law and the New Patent Approach

However, for Israeli companies in the tech space looking to secure U.S. market share, recent case law following *Alice* provides hope for protecting their software-based inventions, the chances of which increase if they work with a patent attorney who closely follows new case law and accordingly changes the way he or she drafts patent applications. Oddly, the new patent drafting technique … is the old technique (with some caveats). In particular, the once forbidden practice of detailing the problem to be solved, the failures of the prior art to solve the problem and the advantages of the invention over the prior art should now be (carefully) reincorporated into the new drafting style. Below are example cases that explain this development:



DDR Holdings LLC. v. Hotels.com LP: The U.S. Court of Appeals for the Federal Circuit held that because the claimed solution is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks, the claims were patent eligible. Thus, the chance that a software-based invention is patentable may be increased if the patent's specification and claims describe and characterize the problem being solved as an issue specifically resulting from computer technology, which specifically requires computer technology to solve. A skilled patent attorney would strive to accomplish the drafting of such language, while walking the line to mitigate the chances that the problem (and therefore the solution) is seen as well-known or obvious. The attorney would also, and should be able to, broadly describe the invention with multiple different embodiments so as to reduce the likelihood that any particular elements of an embodiment could be interpreted as required for infringement.

Enfish, LLC v. Microsoft Corp. and McRO Inc. v. Bandai Namco Games America Inc. et al.: The Federal Circuit held in Enfish that because the claimed solution was focused on improving the functioning of a computer, the claims were patent-eligible. The Federal Circuit held in McRO that because the claimed solution was focused on the improvement of an existing (prior art) technological process, the claims were patent eligible. Thus, the chances that a software-based invention is patentable may be increased if the patent's specification characterizes the invention as providing an improvement to how a computer functions (i.e., identifying a technical deficiency and explaining an unconventional or alternative technical solution, or identifying and explaining the technical improvements to known computer processes). To be effective, the claimed invention should reflect the described elements that make the improvements possible. Again, a skilled patent attorney would strive to accomplish this, while taking care not to directly cite to any particular prior art documentation (to avoid its accidental mischaracterization), and without implying that all of the particular differences between the invention and the prior art are required for the invention to work.

Conclusion

The key takeaway is that if a company wants to protect its software-based inventions, it is crucial to work with a patent attorney who closely follows the continually emerging and changing case law. In addition, the patent attorney should use his or her experience, best judgment, creativity and innovation to incorporate a hybrid approach of select old and new drafting techniques. As long as the attorney is guided by a fundamental understanding of the risks and rewards of this strategy, the risks of invalidated patents can be mitigated and the rewards of a strong patent portfolio can be exploited for the company's benefit.

Holland & Knight works with clients to protect their intellectual property in numerous technological areas, including software. For more information on patenting your innovations, please contact Michael Abramson.

About Our Intellectual Property Group

Holland & Knight's Intellectual Property Group offers a broad array of legal services to safeguard your assets, including patent litigation; patent, trademark, copyright and trade secret protection; and licensing agreements. In today's increasingly competitive global marketplace, where ever-changing technologies and accelerated product development are the norm, growing and maintaining your intellectual property (IP) portfolio and protecting your company's investments and innovations are critical. Whether you are a global business operating around the world or an individual entrepreneur with an innovative idea, developing, managing and protecting your intellectual property portfolio is essential to ensure your long-term success.

The Rise of Real Estate Technology

By David P. Sofge and Herman R. Lipkis

Retailing Shifts and Technology Heat Up The Warehouse Market

According to the U.S. Department of Commerce, online retail sales grew faster in 2017 than in the previous six years. E-commerce represented 13 percent of total retail sales in 2017 and 49 percent of the growth. Consumers spent $453.46 billion on the internet for retail purchases in 2017, a 16 percent increase compared with $390.99 billion in 2016. That is the highest growth rate since 2011, when online sales grew 17.5 percent over 2010. It is projected that this trend will continue in 2018 and that by 2022, e-commerce will account for 17 percent of all retail sales.

As consumers continue to flock to online retailers, the demand for industrial real estate, specifically warehouses to store and distribute goods purchased online, has grown exponentially. With relatively little available space near metropolitan areas for large warehouses, the pace of new warehouse construction has not kept up with demand, leading to a national shortage of warehouse distribution centers in the United States. Last year, the industrial vacancy rate in the United States reached a 17-year low of 5.3 percent. Industrial rents were up 8.2 percent in 2017, after increasing 8.7 percent in 2016. This has led to a recent boom in industrial construction. Approximately 170 million square feet of warehouse space was completed in the first three quarters of 2017, and 222 million square feet was under construction at the beginning of the fourth quarter of 2017.

It is expected that we will continue to see upward pressure on warehouse rents in 2018, which is a function of limited available space. There will also be aggressive development in markets where it is needed, and there is the ability to build and create new supply.

Saying Goodbye (Soon) to Parking Requirements

With the explosive growth in the popularity of ride-sharing apps, many people are no longer using their own vehicles for regular transport. However, many cities still suffer from crippling traffic congestion. As a result, municipal governments are creating disincentives for residents to have cars. One such method that is growing in popularity is reducing the amount of parking spaces required under applicable zoning codes. For example, of the 76 residential buildings approved in Boston last year, 30 came with fewer than one space per unit. On average across the city of Seattle, developers now include 60 percent fewer parking spaces per unit at new buildings than they did a decade ago. Miami amended its building code in 2010 to waive minimum parking requirements for newly constructed buildings downtown. According to a study by the Massachusetts Institute of Technology, Miami's approach to city zoning dramatically reduced construction costs and produced a boom in high-rise development, including several projects without any parking facilities whatsoever.

As more cities amend their aging building codes to reduce parking requirements for new development, it is expected that this will encourage developers to build more and varied housing units. This, in turn, will help ease the affordable housing crisis plaguing major metropolitan cities. In a related trend, newly constructed parking facilities are increasingly being constructed as shells with modular interiors, in anticipation of a time not long from now when the parking will no longer be needed, as autonomous vehicles become common. At that point, the interior of the structure will be removed and replaced with a build-out suitable for alternative uses.

Real Estate Tech's Expanding Disruption

In 2017, investors pumped over $5 billion into real estate technology, more than 150 times the $33 million invested in 2010. U.S.-based real estate technology firms comprised nearly $6.5 billion, or 52 percent of all venture capital funding raised in 2017. Last year saw many robust financing rounds, IPOs, Initial Coin Offerings (ICOs) and exits. Although venture capital firms remain the dominant funding source for startups, substantial capital is also flowing from other investors, including existing real estate services companies, real estate investment trusts, private equity firms and high-net-worth individuals.

The world of real estate-focused technology companies continues to grow. Companies focused on core real estate functions such as available property searches, lease management, facilities operation and underwriting management continue to proliferate. However, new entrants to the real estate tech market are exploring and delivering cutting edge services such as digital lending platforms, crowdfunding and online property investment portals. Developers increasingly can access capital by using crowdfunding platforms and real estate fintech services, although at the outer limits of mainstream finance ICOs related to real estate have run into a buzz saw of enforcement actions, security breaches, scandals and private legal actions.

Some developers are choosing to partner with startups to finance projects and those real estate firms with experience in early stage businesses, available funds and the appropriate risk appetite may opt to invest in startups with strong value propositions, particularly those that are relevant to their existing or future strategies.

Perhaps one of the most exciting trends to track in 2018 is the application of blockchain and cryptocurrency technology to the traditional world of real estate. Although better known for keeping track of who owns digital currencies such as Bitcoin, some believe that blockchain technology will revolutionize real estate transactions and help lower public recording costs. Last year, the Cook County, Ill., Recorder of Deeds took part in a pilot project exploring how blockchain technology could be used to store property records in the 5.2 million-resident county, which includes Chicago. The Ethereum Project is currently creating a platform for building blockchain applications, some of which can be applied to real estate. These initiatives are pushing up against the limits of what can be done under current law in all developed-country jurisdictions. The reason is that while a blockchain-based title transfer may be effective as a matter of contract between a particular transferor and transferee, after the blockchain transaction is completed it is still necessary that paper documents be properly recorded in the applicable government-sponsored registry in order for the transfer to be effective against third parties.

It is likely that these trends will continue to accelerate for the foreseeable future, as the warehouse industry undergoes the most radical transformation in its history.

About Our Blockchain Technology Team

Holland & Knight's Blockchain Technology Team has assembled a group of knowledgeable attorneys drawn from key practice areas to break down the intricacies of blockchain, show clients how it may benefit their business operations, as well as track the impact of emerging legal and compliance issues. Our blockchain lawyers draw on substantive backgrounds in financial services and banking, real estate, gaming, taxation, intellectual property, mergers and acquisitions, data security, anti-money laundering, corporate law and insurance. Our Blockchain Technology Team can provide insight on how blockchain could change your industry, as well as on how you can prepare for the opportunities and risks that accompany this exciting new technology – both now and in the future.

Changes in the Wind Bring New Opportunities in Florida for Advanced Israeli Transportation Firms

By Meital Stavinsky and David P. Sofge

Winds of change are blowing across Florida – not a חמסין (scorcher), but rather tropical breezes that bring new hope for residents dealing with snarled traffic and new opportunities for developers, local communities and Israeli companies with world-class autonomous vehicle technology. (For a look at the general U.S. picture and Israel's global role in innovative transportation, see "U.S. Congress Takes the Wheel on Autonomous Vehicles," *Israel Practice Newsletter: Winter 2017*.)

A New Test Track for Central Florida

First, on Nov. 13, 2017, officials from Florida's Turnpike Enterprise, along with state and local officials, dedicated SunTrax, a $42 million, 475-acre autonomous vehicle testing site. Florida Agriculture Commissioner Adam Putnam, a Republican candidate for governor, declared at the dedication ceremony that Polk County will be the "testbed for the next generation of technology." Construction on a 2.25-mile oval test track is expected to be completed by spring 2019. By agreement with the state, Florida Polytechnic University students will take the lead in sensor testing and wireless communication for the vehicles.

Miami Builds Momentum

Now South Florida is also moving into the fast lane for autonomous vehicle technology and related transit-oriented development. Late February brought news that Miami-Dade County has become the testing ground for a pilot program to gauge how residents will respond to autonomous and semi-autonomous vehicles. Partners in the program include Ford Motor Co., Domino's Pizza and Postmates, the nation's largest on-demand delivery service which will, *inter alia*, bring DRINKS under the company's alcohol-on-demand program to your door within 25 minutes. Ford and its partners are working closely with Miami-Dade County, which is researching ways to move residents from the suburbs and downtown. The county may be able to provide dedicated lanes and specialized traffic infrastructure for autonomous vehicles.

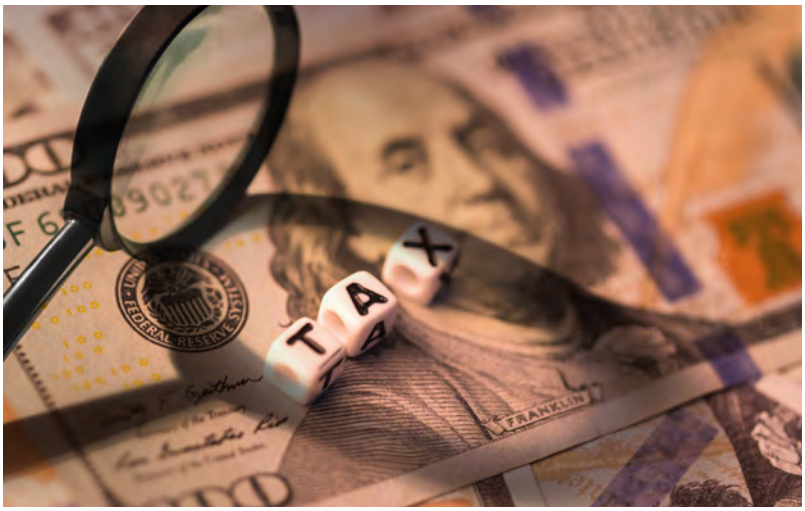
Mapping for the program is underway now. Ford anticipates Miami will be the company's largest test site for autonomous vehicles by the end of 2018. Few regulatory hurdles are anticipated, based on Florida's reputation as the most hospitable place in the U.S. for self-driving vehicles.

At the same time, the city of Miami and other municipalities, along with Miami-Dade County, are pushing hard for new transit-oriented development (TOD). This includes the new Brightline rail service, with a terminal complex rising near Miami's civic center at the western end of Flagler Street, and an ambitious Strategic Miami Area Rapid Transit (SMART) Plan for rapid transit corridors and express buses, under the leadership of Miami-Dade Mayor Carlos Giménez and the county's Transportation Planning Organization (TPO).

Money Matters

Financing for all this has not been neglected. In February, Miami-Dade County passed an ordinance authorizing tax increment financing (TIF) which explicitly references the SMART Plan's rapid transit corridors.

TIF has a turbulent history but has often been used with great success in Florida and elsewhere. Essentially, it involves computing a "tax increment" equal to 1) the total amount of ad valorem tax revenue collected in a specified district after a financed development which is in excess of 2) the base or "frozen" amount that would have been collected from the same area without the financed development. The tax increment can then be used for direct subsidies or as backing for an issuance of bonds.



Often criticized for straying from its original purpose to clear slums, improve blighted areas and provide affordability for low-income residents (as detailed in a 2016 Miami-Dade County Grand Jury report) and even blocked by Gov. Jerry Brown in California, the land of its origin, it has nevertheless received a strong mandate from the Florida Supreme Court, most notably in its 2008 decision in *Strand v. Escambia County*, 992 So. 2d 150 (Fla. 2008). Under *Strand v. Escambia County* and related Florida holdings, a vote ("referendum") of the affected electors, which is generally required for the issuance of bonds under the Florida Constitution, is not required for a TIF offering so long as the bondholders do not have a pledge of the issuing district's full faith and credit or of its ad valorem taxing power, even if the amount of the "tax increment" is measured based on a differential (before and after development) in the amount of ad valorem taxes collected and deposited for payment of the bonds.[1]

Looking Down The Road

These currents will be converging and interacting in new ways in 2018 and beyond. How will Ford and its partners adapt the pilot program to the changes in local governance and transit-oriented development? Will the county and its municipalities be able to incorporate the arrival of autonomous vehicles into their plans to radically transform South Florida's transportation infrastructure? Clearly, there are converging lanes ahead.

The signals are clear: Florida is positioning itself as the exciting new frontier for testing innovative Israeli advanced transportation technologies as they continue to make inroads in the U.S. market. Joint collaboration between U.S. and Israeli transportation technology companies in Florida has the potential to attract smart and innovative jobs to the region, to the benefit of providers and local communities alike.

About Our Autonomous Transportation Team

Transportation in the 21st century is going through revolutionary change as mode of transport, infrastructure and technology converge in unprecedented ways. Holland & Knight's Autonomous Transportation Team has the in-depth experience and knowledge needed to help companies, including startups, in their efforts to define the future of this ever-evolving arena. Our attorneys and professionals advocate for clients and assist them in navigating all aspects of the complex legal, policy and regulatory landscape surrounding autonomous transportation, including in the automobile, aviation, maritime, rail, transit and trucking industries. We are uniquely positioned to assist clients in seizing opportunities and overcoming challenges for new autonomous transportation technologies.

[1] Holland & Knight filed an *amicus* brief in support of the victorious party in *Strand v. Escambia County*.

About Our Israel Practice

With an intimate understanding of the Israeli economic, political and social environment, members of Holland & Knight's Israel Practice Team provide a wide array of legal services to both Israeli clients operating abroad and companies and investors doing business in Israel.

Areas of legal guidance typically provided to our Israel Practice clients include real estate, mergers and acquisitions, private equity, international tax, cross border and customs, internet privacy and cybersecurity, intellectual property, government lobbying, regulations and compliance, U.S. Foreign Corrupt Practices Act (FCPA), U.S. Foreign Account Tax Compliance Act (FATCA), and litigation and dispute resolution.

Our lawyers have extensive experience with outbound projects and regularly represent clients from the region. A core value of Holland & Knight is our dedication to delivering the highest quality of legal services and providing responsive and cost-effective counsel to every client. This core value of the firm – coupled with our business acumen, legal experience and solid commitment to the Israeli marketplace – enables us to successfully assist our Israeli clients operating in the United States, as well as companies and investors doing business in Israel.

About This Newsletter

Information contained in this newsletter is for the general education and knowledge of our readers. It is not designed to be, and should not be used as, the sole source of information when analyzing and resolving a legal problem. Moreover, the laws of each jurisdiction are different and are constantly changing. If you have specific questions regarding a particular fact situation, we urge you to consult competent legal counsel. Holland & Knight lawyers are available to make presentations on a wide variety of Israel-related issues.

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