

## Japan

### “Right to Be Heard in Patent Examination Appeal”

**Patent Act, Secs. 50, 159(2) – *Haier Group v. The Commissioner of the Patent Office***

**Decision of the Intellectual Property High Court  
4 October 2011**

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In the case where amendments for the purpose of restricting the scope of claims were made on appeal against a refusal of the application, and the appeal board denies inventive step of the amended claims based on newly introduced prior art, the appeal board prior to issuing a decision should notify the appellant of the reasons for rejection and give him an additional opportunity to make amendments and to submit a written opinion in order to comply with due process at the stage of patent examination. Where no such opportunity has been given, the decision is procedurally flawed and must be set aside.

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Summarised by Hisayoshi Yokoyama.

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