Japan

“Misappropriation of Prior Art”

Patent Act Sec. 123(1)(vi) – *Kato Mfg Co. Ltd. v. Tsukasa Machine Industry Co. Ltd.*

**Decision of the Intellectual Property High Court
10 November 2011**

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In cases where the plaintiff alleges invalidity of the defendant’s patent because the defendant had misappropriated the invention cited as closest prior art and improved thereupon, the patent should not be regarded as misappropriated only on this ground unless the patented invention is identical to the cited prior art, the more so since such prior art had been publicly known at the time of the application.

Summarised by Hisayoshi Yokoyama.