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The Italian Supreme Court on the test for prior disclosure

Daniela Ampollini (Trevisan & Cuonzo) · Wednesday, June 6th, 2012

By decision of 23 March 2012, the Supreme Court decided a case between two competitors in the field of steel products and machinery, concerning in particular the alleged infringement of two Italian patents covering a winding up mechanism for steel wire. The alleged infringer had counterclaimed invalidity based on prior disclosure, claiming in particular that the novelty of the inventions had been destroyed by the disclosure to third parties, prior to the priority date, of synthetic drawings concerning the winding up mechanism. The Supreme Court, confirming the decision of the Court of Appeal, established that the fact that said drawings were merely synthetic ones, and that they were seen by people who, given their technical background, were probably unable to autonomously carry out the invention, does not exclude the novelty destruction effect, given that the drawings had to be considered sufficient to provide indications on the essentials of the invention and that the people who had seen them could always seek the assistance of more expert people in the realisation of the invention. The reasoning of the Supreme Court is unfortunately rather synthetic and little elements are given as to the actual facts of the case and, in particular, the extent of the alleged disclosure and the level of expertise of the people with respect to whom the disclosure was made. It is however interesting that the Supreme Court seems to have clearly established a principle according to which an even partial disclosure of the invention given to non experts may be novelty destroying in the circumstances.

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