

CHAPTER 3

FUNCTIONAL FEATURES

- 3.1 Section 18 provides that an application for registration shall not be refused because the design includes features that serve a functional purpose.
- 3.2 Features that serve a functional purpose are those features of an article that are dictated by the article's function or its working relationship with other articles. In other words if the article does not have a certain shape or configuration it may not be able to perform its function. An example of this is a video cassette. It has grooves, slots, flaps and spools which have to be of particular shapes and in particular places on the cassette in order for it to operate in the video recorder.
- 3.3 While functional features do not preclude registration, examiners should remember that when it comes to determining newness or originality, function is not a factor. In *Re Application by Freighter Australia Manufacturing Pty Ltd* 11 IPR 512 at 515 it was stated that "...the particular practical effect.... is of no significance in assessing the novelty of its shape and configuration".
- 3.4 Examiners should also be aware that the position in the UK on functional features is different and therefore UK judgements should not be followed.