

CHAPTER 4

METHOD OR PRINCIPLE OF CONSTRUCTION

- 4.1 Under the definition of a design in section 4 anything which amounts to a method or principle of construction is specifically excluded. This exclusion reflects the basic concept of design; namely that a design is applied to an article to give it a specific appearance, and is not related to the way or means by which something is made. In *Malley Ltd v. J.W. Tomlin Pty Ltd* (1961) 35 ALJR 352 it was stated that
- "It is not the function of design to indicate a process of manufacture; indeed, anything amounting to a method of construction that would permit differences of shape spells invalidity"
- 4.2 A method or principle of construction is a process by which a design is produced as opposed to the design itself. Any conception which is so general as to allow of several different specific appearances being made within it is too broad and would amount to a method or principle of construction.
- 4.3 Whether an examiner raises an objection based on this ground will depend on each case. If there is no statement of monopoly, it would appear unlikely that an objection would apply. However where a statement of monopoly is lodged, examiners should consider whether the statement is too broad and attempts to indicate a number of specific appearances which embody common features. If so then an objection should be raised. In *Acme Metal Goods Manufacturing Co. Inc.'s Application* (unreported issued 15 September, 1983), the Registrar considered that the monopoly defined in the statement of monopoly consisted only of a selection among the features which collectively determined the shape of the hook. Therefore the design was not for a specific shape of hook, but a generality of shapes of hook having in common only the various combinations of bends and curves of a hook..
- 4.4 In *Warman International Ltd & Ors v Envirotech Australia Pty Ltd & Ors* (1986) AIPC 90-314 it was judged that representations which are manufacturing drawings amount to a method or principle of construction. However, when these types of drawings are included in an application, examiners should object that the drawings do not comply with Part II of the Schedule 3 in that they contain extraneous material, rather than that the application is directed to a method or principle of construction.