

CHAPTER 11**REPRESENTATIONS****INDEX**

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INTRODUCTION

- 11.1 Since it is the visible appearance of the article that is being assessed when examining a design the representations are the most vital element of the application because they:
- i) provide the basis of the monopoly protection (since only what is shown is protected)
 - ii) remain the official record of the registered design
 - iii) allow the public and the examiner to compare similar designs

The representations therefore need to be of sufficient quality to perform these functions. The requirement for clear representations was emphasised in *Fisher (L.J.) & Co. Ltd v Fabtile Industries Ltd.*(1979) 49 AOJP 3611 ; where the quality of the representations was criticised for not adequately showing the design.

The following paragraphs describe the quality required for representations. Where the representations do not meet any of these standards then an appropriate objection should be raised.

MONOPOLY STATEMENT

- 11.2 While the representations provide a visual indication of the **article** being protected, the monopoly statement may have a significant effect on the **design** being protected. For example if two applications (A & B) with exactly the same representations and with application A claiming "shape and configuration" and application B claiming "pattern and ornamentation" two different designs are in question. ie. the shape and configuration of the article and the pattern and ornamentation of the article. (See "statement of monopoly" in this manual.)

ARTICLE

- 11.3 The representations must show **an article**. They cannot simply show, for example, the two dimensional design applicable to a T-Shirt without showing the T-Shirt to which it is applied. An actual physical item must always be shown. Also the representations cannot show part of an article that has no separate existence eg. the bowl of a spoon without the handle. However, any part of the article which has been disclaimed in the monopoly statement may be shown in dotted outline leaving that part of the article within the scope of the monopoly in hard outline.
- 11.4 The representations must show **the article nominated** in the application. If they show something different then an objection to the name of the article should be made.
- 11.5 The article shown must be of **fixed appearance**. That is it should not allow any variability in the appearance of the article that is not simply a movement its parts. eg. the arms and legs of a doll that can be moved to various configurations do not change the design of the doll and may be shown in the representations in any chosen variety. If however the

representations showed the doll in different clothes then the design is variable and an objection indicating that the representations show more than one design can be raised.

QUALITY AND QUANTITY OF REPRESENTATIONS ORIGINALLY LODGED.

- 11.6 **Quality.** When an application is lodged the representations must be of sufficient quality that the basic features of the article can be seen. If they are too vague or indistinct then they cannot be amended later to show the article more distinctly. Refer to notes on "Indexing".
- 11.7 **Quantity.** There is no need for a full set of acceptable representations to be lodged first off. A single sample of otherwise unacceptable representations may be lodged so long as the design in question is clearly visible.

While the regulations require 14 copies of the representations to be lodged, this has been reduced to 5 because the office no longer sends copies to each of the state-offices. A Form 2 (Additional Representations) is no longer required for the same reason. No objection need be taken if a form 2 is included in the application though.

PRESENTATION

- 11.8 Schedule 3 Part II item 6 specifies that the representations should be mounted or drawn on standard A4 paper. Thus "house plan" size representations should be rejected.

REPRODUCTION

- 11.9 Regulation 18.1 requires that at least one of the representations lodged should be suitable for reproduction in the Official Journal of Designs. This requirement is normally applied to all the representations such that an objection may be raised if **any** of the representations are not suitable for reproduction. A quick way to assess the reproducibility of the documents is to photo-copy them. If the design is not clearly visible then new representations should be requested.

TYPES OF REPRESENTATIONS

- 11.10 Representations according Section 4(1) of the Act are:

"in relation to an article to which a design is applied, means **drawing**, tracing or **specimen** of the article to which the design is applied or a **photograph** of such drawing, tracing or specimen."

Each of these different types of representations is treated separately below. Schedule 3 Part II of the Regulations gives more detail about the statutory requirements for representations. What follows seeks to describe the issues involved in assessing the suitability of the representations.

PHOTOGRAPHS

- 11.11 (a) **Quick test.** A quick way to test the suitability of the representations is to photo-copy them. Generally, if they are clear in the copy then they will be acceptable if all the other requirements are met.

- (b) Colour or black & white .** While the office prefers black and white photos because they normally reproduce better than colour, colour photos are acceptable so long as they fulfil all of the other requirements.
- (c) Instant photos .** "Polaroid" or other instant type photos should be rejected as they will deteriorate with time and will not leave a permanent record.
- (d) Photocopies of photographs .** Generally photocopies of photographs are not of sufficient quality for reproduction. Some photocopies though do show the article very clearly. These may be acceptable. Consult your supervisor if you are unsure.
- (e) Labelling .** While it is normally apparent from a photograph what is being shown, labelling of the photos as to what they are showing may be required. This may be especially important if a photo is showing a detail of the article or part of the article separately.
- (f) Dimensions .** Photos should not contain any indication of the dimensions of the article eg. a ruler. If an article of known size is shown for comparison, this will have to be removed. Dimensions are not registrable since, theoretically, the design may be applied to any size of article.
- (g) Extraneous matter .** As far as possible the photos should show only the design in question. If other items are shown there may be some confusion as to what the design is, and the appearance of the article may be obscured. New photographs with the detail removed should be requested if the photographs are like this.
- (h) Background & shadows .** Ideally photos should be taken against a plain and contrasting background. The article is then more likely to be clearly defined. Strong shadows are likely to confuse important detail of the design and should be eliminated.
- (i) Indefinite Length .** Articles of indefinite length are difficult to show in photographs. If the monopoly statement indicates indefinite length but the photographs of the article do not then drawings would be more appropriate.
- (j) Mounting .** It is not necessary for photos to be mounted. However if they are mounted then they should be fixed securely on A4 sized paper. This may be done with double sided tape, ordinary sticky tape, staples or photo-corners. The paper should be of sufficient strength to support the photos. Any glues or adhesives used should not cause any deterioration of the photographs.
- (k) Textiles .** Any representation of patterned fabrics should show at least one pattern repeat.

DRAWINGS

- 11.12 **(a) General .** Drawings should be of draftsman quality as far as possible. The drawings required for a design though should be illustrative only and not working drawings

which may contain dimensions, dimension lines, parts lists and other information required for making the article.

(b) Views. A single perspective view may be sufficient to illustrate the article. In cases where only two dimensional views (plan, elevation and side views etc.) have been shown a perspective (or other three dimensional drawing) may need to be included especially where the appearance of the article is not easy to grasp from the two dimensional views. For simple shapes though two dimensional views alone can be enough. This may vary from case to case though. See your supervisor if you have any doubts.

(c) Labelling. All drawings should be clearly labelled as to what they are showing. eg. end view, plan view, side view, perspective etc. This aids in the correlation of the views to see if the same article is being shown by each view. This applies especially to exploded views (see below).

(d) Consistency Of Views . All views should be checked to see that they are consistent in detail and that nothing additional is shown in one drawing that is not indicated or implied in another.

(e) Dimensions . Dimensions are not registrable particulars of a design and should be removed. If the drawings also contains dimension lines, arrows or other conventional drafting linework, then these should be objected to as extraneous material (see below).

(f) Coloring/shading. The appearance of the article should be clear simply from the line drawing. Shading to illustrate form is not commonly used except in rudimentary form eg. to illustrate a transparent surface. However different styles of shading, cross-hatching or patterning eg. dots may be used to indicate colour. The significance of the shading should be indicated in the monopoly statement.

(g) Exploded Views. An exploded view may be included if it is necessary to illustrate the appearance of parts that could otherwise not be clearly illustrated or if components of the article being illustrated can be separated in normal use eg. a bottle with cap. Where an exploded view shows parts of the article that would not otherwise be seen in use it should be deleted. (See also "monopoly statement").

(h) Details. Drawings showing enlarged views of parts of the article are permissible so long as the are consistent with the other drawings, are clearly labelled and do not show parts of the article that would not otherwise be visible.

(i) Sketchy. If the linework used in the drawing(s) is inconsistent, faint or otherwise fails to clearly delineate the article then the examiner should request new representations with more consistent linework.

(j) Hidden Detail Hidden detail (normally shown by broken lines) should be removed because it does not show the article as it would actually appear

(k) Indefinite Length If the article has any dimension that is not fixed eg. an extrusion this should be shown by normal drafting conventions. One way this can be shown is by "breaking" the article through a central point and drawing two parallel lines with one or more zigzags along the length through the break. Another way is to draw one end of the article in ragged outline. Examples of indefinite length are shown in the advice sheet on representation.

(l) Wording incorporated on the article being registered eg. a brand name, is normally disregarded as it rarely effects the overall appearance of the design.

(m) Extraneous matter. The drawings should show only the design in question. If other items are shown there may be some confusion as to what the design is, and the appearance of the article may be obscured. (See *Re Kevin McNamara* (1986) AIPC 90-335). If the additional items are not disclaimed in the monopoly statement then they should be removed. Extraneous matter may also include conventional drafting linework eg. dimension lines. Except as described above all extraneous matter should be removed.

(n) Section Views Section views may be included as a way of showing the profile of the article eg. internal features of a bottle cap where normal views would not adequately show this. If the section shows internal detail that would not be seen in the finished article the view should be deleted or the internal features disclaimed in the monopoly statement.

SPECIMENS

- 11.13 Drawings and photographs are the preferred method of illustrating a design. Three dimensional articles are difficult to store and reproduce and should be replaced by drawings or photos.[See Reg 52(5)]. Specimens of two dimensional articles may be acceptable as long as they fulfil all the other requirements for representations especially size and reproduction. (Samples of textiles can be accepted (eg. tartans) so long as they submit well to reproduction and show a pattern repeat.) If the specimen does not reproduce well then it should accompanied or replaced by more suitable drawings or photos.

SETS

- 11.14 Where protection for a set has been sought and accepted then one page of the representation should show all of the members of the set together. (cf. *Re Application By Porcelain Products Pty Ltd* 7 IPR 367)

AMENDMENTS

- 11.15 Representations may be amended under Section 22B by deletion of one or more existing representations, by total substitution of the representations or by augmentation of the existing representations. The new representations should show the same design as was originally lodged. They should be rejected if they don't. (See *Re International Chemical Engineering A.G.* (1988) AIPC 90-474). Minor changes may be made so long as they do not significantly affect the design. Consult your supervisor if you are unsure.