# THE AUSTRALIAN ASSOCIATION OF THE FEDERATION OF INTELLECTUAL PROPERTY ATTORNEYS
## FICPI AUSTRALIA

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**By email**

To: MDB-QEP@ipaustralia.gov.au

Commissioner of Patents
IP Australia
PO Box 200
Woden ACT 2606

**RE: Consultation on the Patent Manual of Practice and Procedures (Manual): Computer-Implemented Inventions (Section 5.6.8.6) May 2026**

FICPI Australia welcomes the opportunity to provide a submission relating to the March 2026 changes to the Patent Manual of Practice and Procedure (the Manual).

## About FICPI Australia

FICPI Australia is the Australian National Association of the International Federation of Intellectual Property Attorneys (FICPI).

FICPI is the only international NGO whose membership consists exclusively of IP attorneys in private practice. FICPI**,** therefore, represents a key constituency of the international IP system.

Founded more than 100 years ago in 1906, FICPI now has more than 5,000 members, including the US and Japan, Australia and New Zealand, a strong European membership and national sections in India and China. Further details regarding FICPI can be found at www.ficpi.org.

## OVERVIEW

This submission responds to IP Australia's March 2026 update to section 5.6.8.6 of the Manual, which covers consideration of manner of manufacture (MoM) of computer-implemented inventions (CIIs). The update followed the Full Federal Court's decision in *Aristocrat Technologies Australia Pty Ltd v Commissioner of Patents* [2025] FCAFC 131 (**Aristocrat 25**) and the High Court's unanimous refusal of special leave in February 2026.

The submission makes one central argument: the updated Manual does not accurately reflect the law as it now stands. While the Manual has adopted some of the language of *Aristocrat 25*, it has preserved in substance the very examination methodology that the Full Court rejected. The change is cosmetic, not in the underlying framework that has been overruled.

Our submission is structured as follows.

**WEBSITE: www.au.ficpi.org**

**PRESIDENT:**
**ROHAN WALLACE**
C/- IP Sentinels
Level 1, Suite 3
23 Richardson Street
SOUTH PERTH WA 6151
Australia

Telephone
+61 8 6468 0932
E-Mail
rohan@ipsentinels.com.au

**SECRETARY:**
**DR. RONELLE GELDENHUYS**
C/- Jones Maxwell Smith & Davis
Level 1, Nth Tower
527 Gregory Terrace
Fortitude Valley
BRISBANE QLD 4006
Australia

Telephone
+61 7 30402900
E-Mail
rgendenhuys@jmsd.com.au

**TREASURER:**
**TARA J PARISH**
C/- TJIP
Office 1,
10 Barboutis Street
Belgian Gardens
TOWNSVILLE QLD 4810
Australia

Telephone
+61 7 4771 4702
E-Mail
tj@tjip.com.au

Section 1 identifies the core legal problem. The MoM test is a low and permissive threshold, that operated in the context of the structural asymmetry between wrongly refused and wrongly accepted applications. The Manual continues to permit examiners to apply a threshold that is higher than the law permits.

Section 2 traces the origin of the analytical error, as we see it. The examination practice that came to dominate CII assessment from 2014 onward was influenced by UK and European jurisprudence designed to implement a statutory exclusion structure that has no counterpart in Australian law. That framework, which required a technical contribution in the EPC sense, was embedded in Australian examination practice through *Research Affiliates* and the cases that followed it, without any foundation in Australian statute or binding authority.

Section 3 identifies specific errors in the updated Manual, covering: the misuse of prior art and common general knowledge in the characterisation step; the conflation of "substance" with "inventive concept"; the introduction of an unwarranted "relevance" qualifier on the artificial state of affairs; the misuse of descriptive language from *Aristocrat 25* as if it were a legal test; and an inappropriate cross-reference to s 40 within the MoM analysis.

Section 4 sets out the correct examination framework. It describes the proper sequential steps of construction, characterisation, and the MoM question, and explains the operative distinction between manipulation and implementation. It also addresses the requirements for examination records.

Section 5 addresses the position of applications previously examined or refused under the approach that has now been determined to be wrong.

Section 6 addresses the economic and productivity consequences of examination practice that does not reflect the law.

## 1. THE MANUAL DOES NOT ADEQUATELY REFLECT THE LAW AS IT NOW STANDS

The March 2026 update to the Manual engages with stakeholder feedback following *Aristocrat 25*, and some of the submissions from the CII Task Force are reflected in the changes. That engagement is acknowledged.

The update nonetheless falls short of what the law now requires. In our opinion, the changes do not, in substance, reflect the law as determined by *Aristocrat 25* and confirmed by the High Court's refusal of special leave on 5 February 2026.

The Manual has adopted some of the language of *Aristocrat 25* but still appears to have preserved much of the underlying examination methodology that the Full Court clearly rejected. In our view, the change is largely in vocabulary and presentation, not in the conceptual framework applied. The Commissioner’s thinking advocated for in the special leave application, but rebuffed by the High Court, has not been displaced; it has been restated in a more subtle form. The updated Manual still reflects aspects of the approach advanced in the special leave application.

## 1.1 The Central Analytical Error: Conflation of Manner of Manufacture with Inventive Step

The central analytical difficulty that emerged in CII examination was the gradual importation into manner of manufacture analysis of considerations properly belonging to novelty and inventive step. This occurred by identifying the inventive contribution as the substance of the invention and by applying a higher test than actually required. Requirements such as 'technical contribution', 'improvement in computer technology', 'something more', or 'relevance' effectively operated as covert thresholds of inventiveness applied at the subject matter stage. *Aristocrat 25* materially constrains that approach by reaffirming that manner of manufacture is a distinct and lower threshold inquiry directed to the existence of an artificially created state of affairs and useful result, not the ingenuity of the implementation.

## 1.2 Manner of Manufacture is a Low Threshold

The manner of manufacture test under s 18(1)(a) of the *Patents Act 1990* (Cth) is, and is intended to be, a low and permissive threshold. The 'allowing reasons' in *Aristocrat Technologies Australia Pty Ltd v Commissioner of Patents* [2022] HCA 29 confirm at [111] "the threshold is low" and [114] that manner of manufacture "requires only the existence of some material and artificial advantage." The legislative intention is consistent with that characterisation: in enacting the *Patents Act 1990* (Cth), Parliament expressly rejected the option of a "more inflexible codified definition" of patentable subject matter, instead preserving the manner of manufacture criterion to be applied on a case-by-case basis (see French CJ in *Apotex Pty Ltd v Sanofi-Aventis Australia Pty Ltd* [2013] HCA 50 (**Apotex**) at [16]). The Explanatory Memorandum to the *Patents Bill 1990* (Cth) reflects the same legislative intention as being little more than a test for subject matter in the useful arts, rather than the fine arts. The threshold is meant to be inclusive, not exclusionary. *NRDC* itself states the principle in unequivocal terms. The High Court at 277 held that a manner of manufacture exists where there is "an artificially created state of affairs", and that the formulation was not to be regarded as a precise verbal test but as a guide to the essential character of patentable subject matter. The Manual must reflect *NRDC* as it stands, not a doctrinal overlay constructed after it. *Aristocrat 25* at [73], confirms this "(t)he threshold was described as low, and imposed a less stringent requirement than the independent requirements of novelty and inventiveness".

The High Court in the allowing reasons confirmed this in the clearest possible terms at [151]: 'There is only one question: is there a manner of manufacture within s 6 of the Statute of Monopolies?' That single question is approached through non-exhaustive enquiries, but, as the allowing reasons immediately add, 'the limits involved in each of these enquiries are not narrow. To take an approach to a manner of manufacture that is too confined is "unsound to the point of folly".'

The *NRDC* threshold is low and is meant to be. It is not a vehicle for assessing the quality, merit, or sophistication of an invention. Those questions arise under separate statutory grounds and must remain there. Quality, merit, and sophistication are the concerns of novelty and inventive step. The High Court has been explicit that these grounds must not be conflated with manner of manufacture, which is assessed by reference to the face of the claim, not by reference to the prior art base (allowing reasons at [108]). A subject matter inquiry that asks "is this invention good enough?" is asking the wrong question. The only question is the one identified at [151] of the allowing reasons. The Manual currently still permits examiners to act as gatekeepers treating the threshold as a gate to be unlocked rather than as a gateway through which (normally) all subject matter that produces an artificial economically useful result pass to

be assessed for novelty and inventiveness as it is intended to be (setting aside subject matter that is subject to the extra *Myriad* factors in new fields). The onus, as a matter of statute and on the balance of probabilities, lies on the Commissioner, not the applicant, to only determine in the negative only when that low threshold is not met.

### 1.3 The Asymmetry of Consequences

This low threshold is reinforced by the asymmetry of consequences in patent examination. A wrongly refused application is, in practice, fatal to the applicant's rights: once final refusal occurs, the applicant loses the priority date, the disclosure has been made, and the opportunity for protection is generally gone. A wrongly accepted application, by contrast, remains subject to multiple correction mechanisms, including re-examination under s 97, opposition under s 59, and revocation under s 138. The system is designed so that error by acceptance is correctable, while error by refusal is only correctable at the time by appeal to the court – a time dependent burden on the applicant. This asymmetry is itself a structural argument for keeping the examination threshold permissive and for placing the onus on the Commissioner to establish (not merely assert), on the balance of probabilities, that a claim is not a MoM. The standard is not whether the examiner is 'convinced' that there is a MoM; the standard is whether, on the evidence and arguments before the examiner, it is more probable than not that the relevant ground is made out. The asymmetry of consequences is a structural reason for the Commissioner to ensure that examiners and hearing officers correctly apply that standard with discipline, particularly where the consequence of error in favour of refusal is the permanent loss of rights that cannot be restored.

Error by incorrect objection is a step down the rejection road and imposes substantial cost on applicants to overcome a wrongly made objection. The current Manual enables incorrect objection by preserving in substance an analytical approach the courts have rejected. The Manual places the practical burden on applicants to overcome inadequately reasoned, conjecture-based objections raised on the basis of a methodology not supported by binding authority. The structure of those objections, often resting on conjecture rather than reasoned analysis, places the practical onus on the applicant to disprove the examiner's summary conclusion. That inverts the correct legal position.

### 1.4 The Rejected Approach Still Remains in Diluted Form

In rejecting the special leave application, the High Court disagreed with the Commissioner's position stated in the special leave application in terms that left no room for ambiguity. The High Court unanimously refused special leave in *Commissioner of Patents v Aristocrat Technologies Australia Pty Ltd* [2026] HCADisp 15, stating that the "Full Court applied established principles concerning the assessment of manner of manufacture and reached a unanimous and clear conclusion as to characterisation." The Commissioner's foundational premise, that the Full Court had erred according to the Commissioner’s understanding of the law, was rejected.

That underlying thinking behind the leave application continues to pervade the Manual in diluted form, and the Manual must be rewritten from that corrected starting point, rather than apparently clinging to the vestiges of the old approach. The only genuine way to recognise this is to ensure that former incorrect practices are explicitly prohibited in the Manual.

## 2. THE ORIGIN AND NATURE OF THE ANALYTICAL ERROR

The allowing reasons, *Aristocrat 25* and the rejection of special leave confirmed that the analytical approach applied in CII examination by IP Australia for more than a decade was overly restrictive.

Following *CCOM Pty Ltd v Jeijing Pty Ltd* [1194] FCA 1168 (**CCOM**) the correct approach was permissive. However, that changed. The analytical approach applied in CII examination for more than a decade did not emerge from *NRDC* and the settled Australian law of manner of manufacture. It developed incrementally, beginning with decisions at the Office level in the early 2010s and becoming entrenched in Full Court authority through *Research Affiliates LLC v Commissioner of Patents* [2014] FCAFC 150 (**RA**) and the cases that followed it, in particular *Commissioner of Patents v RPL Central Pty Ltd* [2015] FCAFC177 (**RPL Central**) and *Commissioner of Patents v Rokt Pte Ltd* [2020]FCAFC 86 (**Rokt**).

### 2.1 Characterisation of the Invention

#### Myriad

The notion of characterisation of the invention based on its substance, not the form of the claim, was clearly articulated in *D'Arcy v Myriad Genetics Inc* [2015] HCA 35 (**Myriad**). *Myriad* is credited by the Commissioner as the source of the “substance of the invention” approach, but the broader analytical framework that came to dominate examination practice does not originate there.

#### Research Affiliates

In *RA*, the Full Court was dealing with a difficult case at the edge of known principles and turned to UK and US jurisprudence to supplement the analysis. It noted that the Australian approach was "consistent" with that taken in the UK and United States, and drew in particular on the UK Court of Appeal's framework in *Aerotel Ltd v Telco Holdings Ltd* [2006] EWCA Civ 1371 (**Aerotel**). The *Aerotel* test required, as a threshold matter, that a claimed invention make a "technical contribution," with any matter falling within an excluded category "as such" being stripped out of the analysis.

#### Europe vs Australia

The difficulty with applying that reasoning in Australia is that it was designed to implement a statutory exclusion structure under Article 52 of the EPC, which has no "as such" exclusion counterpart in the *Patents Act 1990* (Cth). Under the EPC, the heavy lifting of patentability assessment is done at the inventive step stage, where only technical contributions can be considered to contribute to inventive step, and that is also the mechanism by which subject matter passes the "as such" exclusion.

Australia does not have the same inventive step requirements. There is therefore no legal basis in Australia for importing a technical contribution requirement, in the EPC sense, into the manner of manufacture inquiry. The *NRDC* test asks a fundamentally different question, namely whether the claimed invention produces an artificially created state of affairs with economic utility, without any category-based exclusion and without any requirement for a technical contribution as such.

## UK vs Australia

Nor does *Myriad* provide any foundation for an *Aerotel*-style contribution analysis. *Myriad* developed a factorial approach for the patentability of genuinely new categories of subject matter at the boundaries of judicial development of the concept of manner of manufacture. That factorial approach is distinct from, and is not, a technical contribution test. It does not authorise the stripping of conventional integers, the identification of an inventive concept as the substance of the invention, or any of the other features of *Aerotel*-style analysis. Grafting an *Aerotel*-style contribution analysis onto an *NRDC*-based inquiry therefore introduced a threshold requirement that had no foundation in Australian statute or binding authority, including *Myriad*.

The allowing reasons of the 2022 High Court themselves warn against this importation. At [127] the High Court observed that UK and US authorities in this area are 'at best, of limited assistance and, at worst, dangerously misleading' given the different statutory frameworks. The Manual continues to reflect, in softer language, the very analytical approach that warning was directed at.

## Technical Contribution

The downstream consequences were significant. Once the "technical contribution" framework was embedded, examination practice came to treat CIIs as presumptively unpatentable in the absence of a demonstrated technical contribution, such as an advance in computer technology. This is reflected in the Commissioner's special leave application, where the operative examination standard was articulated at paragraph 33: where "there is no ingenuity in the manner of the implementation of the abstract idea in the computer, as distinct from any ingenuity in the unpatentable abstract idea itself, there is no patentable subject matter." That argument, on which examination practice was conducted for over a decade, was rejected by the allowing reasons in 2022 and by *Aristocrat 25*. It required ingenuity in the computerisation itself, which conflates the MoM assessment with novelty and inventive step.

The post-2014 examination approach was inconsistent not only with *NRDC* but also with the legislative purpose that Parliament confirmed in enacting the *Patents Act 1990* (Cth). In *Apotex Pty Ltd v Sanofi-Aventis Australia Pty Ltd* [2013] HCA 50 (**Apotex**) at [16], French CJ confirmed that Parliament's purpose in enacting s 18(1)(a) was that the manner of manufacture criterion "ought to continue to be applied on a case-by-case basis", and that a "more inflexible codified definition" had been considered and rejected. An examination framework that imposes a categorical threshold requirement (such as a technical contribution or an advance in computer technology) is, in effect, the codified definition that Parliament rejected, applied administratively rather than legislatively. The objection is not just to the misreading of *NRDC*. It is to the substitution of the case-by-case methodology Parliament preserved with a categorical filter Parliament expressly declined to enact.

The March 2026 update has removed some of the most prominent phrases associated with the rejected framework. Direct references to an "advance in computer technology" have been edited out, and the manipulation / implementation language has been adopted. These changes are acknowledged. They are not, however, the test of whether the Manual reflects the law. The test is whether the methodology the binding judgments require has been adopted, not whether the discredited phrases have been rephrased. On the analytical methodology, the Manual continues to direct examiners along the path that the Full Court identified as overly restrictive, albeit less directly. Section 3 below identifies the specific provisions in which that methodology persists.

The Commissioner's approach also forecloses the possibility that a new combination of known features may itself be a patentable combination. The Full Court in *Aristocrat 25* expressly

affirmed that the characterisation of an invention may be of a combination of known integers, with no requirement that any individual integer be novel: at [127] and [131].

In practical terms, this produced refusals where the proper *NRDC* analysis, applied to the claim as a whole, should have supported allowance. This methodology was presented as the "identification of the substance of the invention". It was not. It in effect it displaced the proper combination-based characterisation that *NRDC* and *Aristocrat 25* both require. It was “filleting from the claim essential and interdependent integers” expressly disapproved of in the High Court’s allowing reasons at [99], and adopted in *Aristocrat 25* at [71].

## UK post Aerotel

The *Aerotel* approach has now been abandoned in the UK. On 11 February 2026, the UK Supreme Court in *Emotional Perception AI Ltd v Comptroller-General of Patents, Designs and Trade Marks* [2026] UKSC 3 unanimously overturned *Aerotel*, holding that its technical contribution test misinterpreted the structure of the EPC and that the approach should no longer be followed. The UK position following *Emotional Perception* appears to apply a materially less restrictive approach to computer-implemented inventions than the *Aerotel* framework previously permitted.

Any residual thinking that an *Aerotel* ‘inspired’ approach is appropriate in Australia must therefore be abandoned.

## Australia post Aristocrat 25

Today, following *NRDC*, *Myriad*, and *Aristocrat 25*, Australian law applies a test that asks whether the invention, properly characterised according to its substance and not merely the form of the claim, produces an artificial state of affairs and a useful result. The *NRDC* question is the one stated by the High Court at 277: whether the claimed invention produces an artificially created state of affairs with economic significance. It is not, and has never been, whether the claimed invention represents a technical contribution to a field of technology, or solves a technical problem.

The UK and Australian approaches are similar in direction, though the Australian position is not co-extensive with the UK position: the mere presence of hardware in the form of a claim is not, of itself, sufficient to establish that a computer-implemented invention is patent-eligible under the Australian test. As described in more detail below, what is required is that the hardware be genuinely part of how the invention works; that is, that there is implementation of the underlying idea behind the invention by operation of (that is, use of) the hardware, rather than the hardware merely being a vessel in which an independently stated abstract idea, often described as a mere scheme, is to be performed (that is, mere manipulation of the idea). In this respect the Australian position remains somewhat more demanding than the UK position following *Emotional Perception*, even though the Australian test is still intended to be a low bar.

The Australian test has nonetheless been confirmed to be considerably more permissive than the practice applied by IP Australia prior to *Aristocrat 25*.

## 3. SPECIFIC ERRORS IN THE UPDATED MANUAL

### 3.1 The Role of Prior Art and Common General Knowledge

The Manual invokes *Myriad* at [12] to justify the use of prior art and common general knowledge in characterising the substance of the claimed invention. This misapplies *Myriad*.

The passage in *Myriad* at [12] concerns the role of context, including the scientific background as agreed between the parties, in the person skilled in the art (**PSA**) construing what the claimed subject matter is. It addresses the construction phase, not a separate or subsequent characterisation exercise. Moreover, the Full Court in *Aristocrat 25* expressly confirmed that *Myriad* has no particular relevance to CIIs, because electronic gaming machines and other CII subject matter were not "a new class of claim involving a significant new application or extension of the concept of 'manner of manufacture'" as envisaged by *Myriad*. The elaborate *Myriad* factors were developed for genuinely new categories of subject matter at the frontiers of existing judicial development. CIIs are not that category, and the Manual should be explicit that *Myriad*'s framework does not govern the CII analysis.

The subject specification is to be construed by the PSA. This is an exercise in determining what that notional person would understand when they read the specification. That PSA is understood to be in possession of the common general knowledge (**CGK**) as at the priority date. It is for that reason only that CGK is relevant at all. The CGK is thus only available when the examiner stands in the shoes of the PSA for purposes of construction; that is, to understand what they are reading, from the standpoint of those notional shoes. CGK's function is exhausted at the end of the construction stage. At that stage, the PSA is taken to understand what they have read in the patent specification. From a practical standpoint in examination, the examiner should enunciate any necessary understandings from the point of view of the PSA that become relevant to the articulation of any reasons for objections (of any type) in the examination report. In our view, this is best done up front before reasoning is provided for any objections. After this is done CGK can be put to one side until (and if) necessary for inventive step considerations.

Critically, an examiner may not use CGK to re-describe computer elements as conventional and thereby fillet them from the characterisation. Describing components of a claim as conventional, or as using routine techniques, serves no useful purpose in the consideration of MoM and, when used, suggests inappropriate blending of MoM with novelty or inventive step considerations. What the integers of a claim mean has already been settled at the construction phase.

The Manual must explicitly prohibit the “filleting” process and must not import any analytical step that depends on it.

#### Characterisation

The characterisation step that follows construction must proceed on the basis of the claim as construed. In this step, the background section of the specification can be a useful, though not binding, starting point because it commonly sets out what the inventor understood the relevant art to be and what objective the invention is intended to achieve. It is often helpful to identify the problem the invention addresses, as this can illuminate what the invention is doing and how it is doing it. But there will be cases where there is no background section, or where the claims as prosecuted have shifted in scope so that the problem originally identified is no longer precisely the one addressed by the claims. Examiners should treat the background as informative rather than determinative.

Identifying a solution described in the specification can similarly help to characterise what the invention is. If a technical solution is described, this will ordinarily indicate that the invention operates through physical elements in an integrated manner. The identification of a problem and a solution can be of assistance. This not the same as a test.

The absence of a technical solution does not indicate unpatentability: the ingenuity may reside in the idea itself (*Aristocrat 25* at [123], adopting the allowing reasons). The characterisation exercise is not a European-style problem-solution analysis, and examiners must not treat it as one. The purpose is to understand the nature of the invention in Australian MoM terms, not to assess whether a technical problem has been technically solved. That may be a convenient / efficient way of readily characterising the invention in some cases, but it is not a test. This would be “too rigid and narrow” (as explained below).

These are guidance tools that can assist in reaching an allowance efficiently. Where present, they will be strong indicators of an artificial state of affairs. But they are not tests, and they cannot be applied negatively, because their absence is not determinative. An examiner cannot reject a claim on the ground that no technical solution is identified, or on the ground that the background does not describe a technical problem. The only pathway to a negative outcome on MoM is the conclusion, reached after proper characterisation of the invention as a whole, that what remains after searching for the manner of implementation of the invention is merely an abstract idea, or that the computer does no more than manipulate that idea. That conclusion must be a residual one, arrived at by elimination after all the integers of the claim, including the physical and non-inventive ones, have been properly considered and found insufficient to establish implementation. Any implementation is enough. There is no qualifier of the degree of implementation in the allowing reasons, nor in *Aristocrat 25*. Examiners should bear in mind that "merely" in the expression "merely manipulating the idea" does not mean "using a conventional computer." It is a question of there is ***nothing*** *other than*. It means that the computer has no operative role beyond executing the idea as if it were performing a mental process, with the computer serving as no more than the vessel in which that execution occurs, instead of the mind in which the very same idea can reside. The word “merely” is often misread to mean "using standard technology," which is not its meaning in this context.

The Manual must clearly guide examiners through the characterisation process and ensure that incorrect characterisation is explicitly prohibited.

### 3.2 "Substance" Is Not the Inventive Concept

"Substance" is not the inventive concept. This was one of the central errors of the longstanding examination approach, and it requires explanation at a fundamental level because it is deeply embedded in the reasoning that the Manual continues to reflect and in ingrained into a decade of practice by examiners.

The concept of "substance" in the MoM context was developed to ensure that the analysis reflects what the invention genuinely is, rather than how it has been expressed in the form of the claim. It is a safeguard against evasion through drafting, not a licence to filter out parts of the claim before characterisation. The expression arose from *Myriad*, in which the claim in the form of a chemical but was merely a vessel for holding encoded information. In a CII context that might be a computer comprising code for executing a new business scheme. While the form is a computer, that would not be the correct characterisation as the substance of the invention claimed in this example is the new business scheme because the computer’s only role is the

vessel for the mere business scheme to reside in. The same would be the case if the claim what directed to a computer memory instead of the computer.

The historic error arose because "substance" was conflated with "inventive concept." Once that conflation took hold, the examination methodology became: identify what is new or inventive; treat that as the substance; characterise the invention by reference only to that substance. The allowing reasons identified this as the critical error at [147]: the Commissioner's delegate had proceeded on "the error of first identifying the 'inventive concept' and using that to characterise the claim as a mere scheme." The result was that the physical and non-inventive integers of a claim were systematically excluded from the characterisation before the MoM question was even asked. By the time the question was asked, the answer was predetermined.

This is wrong at a fundamental level for at least two reasons.

First, the substance of the invention in the MoM sense is not the inventive concept; as the allowing reasons state at [102] to [103], characterisation requires "consideration of the combination of all of the integers of the claim" and "should not be artificial." An artificially specific characterisation, the allowing reasons note, "could confine any claim to a mere intellectual idea by ignoring the means of implementing the idea."

Second, assessing what is "new" requires a prior art analysis, and no prior art base is defined in the Act for MoM purposes; it is defined only for novelty and inventive step. Treating what is new as the substance of the invention therefore imports a novelty or inventive step assessment into the MoM inquiry. MoM and inventive step are separate statutory requirements, assessed separately. A claim may involve a wholly conventional computer implementation of a new and ingenious idea, and the combination of those known elements, properly characterised as a whole, may well constitute a manner of manufacture (*Aristocrat 25* at [127], [131]).

The Manual must clearly prohibit the use of substance as a filter. It must explain, in language accessible to examiners, why identifying the inventive concept first and characterising the invention by reference to it alone is wrong. The phrase "substance of the invention" forms no part of the Full Court's reasoning in *Aristocrat 25* nor of the High Court's allowing reasons, and it would be preferable not to use it in the Manual at all, given the clear risk that it will be read as invoking the rejected approach.

The need for articulation of the wrong approach in the Manual, additional to the correct approach, is that the practice is a decade old and deeply ingrained. Only explicit prohibition in incorrect practice ensures that those ingrained practices are not perpetuated.

### 3.3 The "Relevant" Artificial State of Affairs

The Manual requires that the artificial state of affairs be "relevant," which in context appears to mean technical or productive of an improvement in the manner in which the computer system functions. This requirement has no basis in *Aristocrat 25*, in *NRDC*, or in any binding authority. The Full Court stated the test in terms of an artificial state of affairs and a useful result. There is no qualifier.

The word 'relevant' appears to be an attempt to rationalise the outcomes in prior cases such as *RA*, *RPL Central*, and *Rokt* by reference to the quality of the physical effects in those claims. It produces a test that does not exist in any authority. Those cases failed not because their physical effects were insufficiently relevant or technical, but because the inventions, as then

characterised, were abstract ideas in which the computer had no operative role beyond executing the idea. The characterisation was the issue, not the quality of the effect. The Commissioner's special leave application at paragraphs 37 to 38 acknowledged precisely this — that the inventions in *RA*, *RPL Central*, *Encompass*, and *Rokt* could be said to produce 'an artificially created state of affairs of economic significance,' but that this did not mandate patentability because of how those inventions were characterised. The finding of no manner of manufacture in each case did not result from the absence of *any* artificial state of affairs at all in the claim; it resulted from the characterisation of the invention as one in which the computer had no operative role beyond executing the scheme, and thus was merely a scheme. The resultant characterised scheme was not at all an artificial state of affairs in the *NRDC* and *Grant v Commissioner of Patents [2006] FCAFC 120* sense, in that at [32] “A physical effect in the sense of a concrete effect or phenomenon or manifestation or transformation is required.”

If the concern underlying the addition of the qualifier "relevant" is that, without it, any physical consequence of computer operation would be treated as establishing patentable subject matter, that concern is unfounded. The trivial physical events that occur whenever any computer executes any instruction (transient memory states, electrical current changes) are consequences of operation, not features of any claimed invention. Proper characterisation of the invention will never treat them as integers of the claim. The allowing reasons at [102] to [103] are explicit that characterisation operates on "the combination of all of the integers of the claim" read in light of the specification. Trivial physical consequences are (typically) not claimed integers and if mere by products ought not be characterised as part of the invention. The discipline of proper characterisation, not a qualifier on the test, is the answer to this concern. The Manual's use of "relevant" addresses, at the level of the test, a concern that the binding authority has already addressed at the level of characterisation.

The introduction of "relevant" as a qualification also immediately raises the question: relevant to what? No satisfactory answer is available because the criterion is not derived from any judicial formulation. It is an addition inappropriately introduced into the Manual, and it should be removed.

We question the appropriateness of use of “relevant artificial state of affairs” even in academic commentary. In any event, even if appropriate, it should be limited to academic commentary rationalising the difference in outcomes in different cases, not in a Manual for examiners to follow the correct process of characterisation.

### 3.4 The "Improved or Altered Manner" Test, "Something More," and the Correct Understanding of *NRDC*

The Commissioner's response to submissions states that "a key factor now is whether a computerised product or system works in an improved or altered manner."

The reference at [136] of *Aristocrat 25* to “an altered EGM which produces an artificial state of affairs and useful result” merely describes the factual outcome in that case. It is not a statement of the governing legal test and cannot serve as one. To treat a fact-specific description as a template for other inventions substitutes outcome for principle.

Where the Full Court uses descriptive language to characterise the factual outcome in a particular case, that language describes the outcome reached on those facts. It does not state the test. The test is at [131] in the words "an artificial state of affairs and a useful result." That is the test that examiners must apply. Descriptive language used by the Full Court to characterise

a specific factual outcome should not be elevated in the Manual, into a criterion that applies to other cases on different facts. The function of guidance language in a Manual differs from the function of descriptive language in a judgment. The two must not be conflated, and the use of identical phrasing in each does not mean they are doing the same work. The Manual must adopt the test as stated, not the factual descriptions used to apply it.

*IBM*, *CCOM*, and *Aristocrat 25* each reach correct results when the proper test is applied. None of them provide a template for subsequent cases. Consistently, the allowing reasons at [134] of *Aristocrat 25* emphasise avoiding the anomaly of treating a computerised implementation as unpatentable where its mechanical equivalent would be patentable: a law encouraging innovation should not yield different outcomes merely because physical components are replaced by software and hardware producing equivalent digital effects.

*NRDC* does not provide a precise verbal formula for the concept of manner of manufacture. The phrase 'fetters of an exact verbal formula' originates in *NRDC* itself at 271. The High Court confirmed in *Myriad* at [18]–[21] that the formulation in *NRDC* remains a guide rather than a rigid formula. The Full Court at *Aristocrat 25* [128] expressly recited both authorities. A Manual provision that operates as a categorical filter (whether through 'relevant', 'improved or altered manner', or 'something more') contravenes this principle.

An artificially created state of affairs with economic utility remains the touchstone, ordinarily sufficient in established technological fields and, plainly, for CIIs without added requirements of improvement, alteration, or “technical effect.” As noted at [114] of the allowing reasons, manner of manufacture “requires only the existence of some material and artificial advantage.” The more elaborate, factors-based analysis in *Myriad* was developed for a genuinely novel category at the frontiers of judicial development. As the Full Court confirmed in *Aristocrat 25*, CIIs are not such a category; the applicable principles are those in *NRDC* as applied in *Aristocrat 25*, without recourse to *Myriad* factors.

The assertion that “something more is required” beyond a computer being a physical product restates the rejected approach. The allowing reasons, adopted by the Full Court at [122]–[123], make clear that the artificial state of affairs and useful result need not themselves be inventive or ingenious; the ingenuity may lie solely in the idea.

Requiring “something more” in the computer implementation invites examination for inventiveness in the computerisation itself, conflating manner of manufacture with inventive step — a conflation central to the overruled approach. If “something more” is intended to mean claiming implementation of the underlying idea, as distinct from the idea itself or mere manipulation of it, that is uncontroversial. However, the courts’ term “implementation” is preferable in the Manual, avoiding any suggestion that “something more” concerns the *manner* of implementation rather than the distinction between implementation and manipulation. Nothing beyond implementing the idea, so that the claim is more than the idea itself and more than its mere manipulation, is required.

### 3.5 The Continuing Relevance of Prior Full Court Decisions

The Full Court in *Aristocrat 25*, and all six members of the 2022 High Court, agreed that the outcomes of prior cases including *RA*, *RPL Central*, and *Rokt* were correctly decided. That agreement requires careful understanding. It does not mean that the reasoning or methodology of those cases remains good law. Indeed aspects of the reasoning were criticised and their applicability stated as “too rigid and narrow”. What was summarily concluded as being correctly

decided was that, as those inventions were characterised in those cases (noting that the resultant characterisations themselves were not revisited, nor reconfirmed), the test of whether those characterisations each produced an artificially created state of affairs as per *NRDC* was applied, and the result of applying that test to those characterisations being negative, was correct.

The allowing reasons in the 2022 High Court set out specifically what was wrong with the prior reasoning. The majority in *RA* and *RPL Central* had in effect required that the invention lie in the computerisation rather than in the idea. The allowing reasons at [122] rejected that as the wrong question: the question is not whether the ingenuity lies in the computer implementation but whether the idea has been implemented in a manner that produces an artificial state of affairs and a useful result. The Full Court in *Aristocrat 25* at [127] to [131] expressly adopted that analysis, confirmed that the reasoning expressed in *RPL Central* at [96] and quoted with approval in *Encompass* at [95] and *Rokt* at [84] reflected an approach that was "too rigid and narrow," and identified the specific error as placing undue weight on the inventive aspects of the claim, to the exclusion of the non-inventive and physical elements. The High Court disposition of the special leave application endorses this as consistent with the previous correct authorities, principally being *NRDC, Apotex* and *Myriad*.

*Aristocrat 25* at [128] expressly recites *NRDC* at 271 and *Myriad* at [18]–[21] for the proposition that the manner of manufacture inquiry is not subject to rigid verbal formula. The reasoning the Full Court rejected at [131] — including the formulation in *RPL Central* at [96] adopted in *Encompass* at [95] and *Rokt* at [84] — is the very kind of rigid verbal formula that *NRDC* and *Myriad* prohibit.

### Lessons from Prior Decisions

The lesson from the prior decisions is therefore this. *RA* failed because, on the characterisation of the invention in that case, there was only a scheme for generating and applying a financial index, with the computer performing each step as any calculator might perform arithmetic. The physical integers were the medium through which the scheme was delivered, not components through which the idea operated. *RPL Central* failed for the same reason, as characterised: the competency assessment was the substance of the invention, and the computer gathered and displayed information in a way that did not alter how the invention worked. *Rokt* failed because, as characterised, the encouragement scheme was the invention, and the computer was the mechanism for delivering it, not a component whose specific functioning was part of the claimed combination. In each case, the characterised invention was a merely scheme being executed in a computer rather than an idea implemented through it, and so each failed the *NRDC* test.

There is a possibility that, if properly characterised now within the allowing reasons and *Aristocrat 25* framework, the proper characterisation of some of those inventions might be different. However, this is moot because those cases are decided. They were characterised according to the specific claims of those inventions, and those **characterisations** were not revisited; only the result, that each, as so characterised, was not an artificially created state of affairs, was confirmed as correct.

We urge that those cases be treated with caution because *Aristocrat 25* is the current definitive statement of the law and has the tacit approval of all seven High Court Justices. There is no need to mention any of the prior cases in the Manual aside from for the purpose of identifying what is disapproved of. If they are mentioned in the Manual, they should be explained in the terms set out above. The Manual must not use them as a framework alongside *NRDC*, because that is precisely what the Full Court in *Aristocrat 25* said must not be done.

### 3.6 Conflation with s 40 Grounds

The Manual continues to suggest that where a MoM objection is uncertain, consideration should be given to whether a s 40 objection may be the more appropriate ground. This is not an appropriate cross-reference within the MoM analysis.

Whether a specification provides adequate support for a claim, or whether the disclosure enables the person skilled in the art to perform the invention, are questions for s 40 and must be assessed as such, separately and on their own merits. Bringing s 40 into the MoM analysis, even in passing, introduces a bias: it creates an implicit suggestion that where the examiner is uncertain about subject matter but senses a difficulty with the invention, this ground should probably be raised. That is not how either ground should operate.

The MoM section of the Manual should address only MoM. Section 40 considerations should be addressed in the relevant part of the Manual dealing with s 40, without any pre-emptive cross-reference in the MoM analysis, which would only introduce that bias.

## 4. THE EXAMINATION PROCESS: THE CORRECT SEQUENCE AND SUBSTANCE

### 4.1 The Correct Sequential Framework

The examination of a CII for MoM should follow the steps below in sequence. These are distinct enquiries and must not be conflated.

#### Precursor Step: Construction.

Construe the claims in light of the specification as a whole, as a person skilled in the art in possession of and using the common general knowledge, to the extent necessary, to understand the meaning of the language used. This is where CGK bears on the analysis as the PSA must understand what they read. This may be assisted by evidence as to how the PSA would construe the claim. CGK's function is exhausted at this step.

This step is a precursor and not part of the consideration of MoM. It is also necessary for other patentability considerations.

#### Step 1: Characterisation.

Identify what the invention is, assessed as a whole. This requires:

- Considering the combination of all integers as claimed, including both inventive and non-inventive elements (*Aristocrat 25* at [127], allowing reasons at [102] to [103]). The characterisation may be of a combination of known integers; there is no requirement that any particular integer be novel (*Aristocrat 25* at [131]).
- Giving equal and explicit weight to all operative implementation integers of the claim, such as hardware or physical claim components. Physical integers may not be discounted or stripped away on the ground that they are conventional or well-known.
- Reading the specification as a whole, with particular attention to the description of how the invention works, including any background that illuminates the invention's purpose, any identified problem the invention addresses, and the way

the solution is described in the body of the specification. These are guidance tools, not tests.

- Not importing any prior art or novelty analysis into this step. What the integers mean has already been determined at Step 1. The characterisation is of the combination as construed.
- Not identifying the inventive concept and treating it as the substance of the invention. The substance is the whole of what is claimed, understood in context. The substance of the invention is not dictated by the form of the claim, but neither is the substance the inventive concept.

**Dos:** Read the claim as a whole. Give credit to all the integers. Consider how the specification describes the operation of the invention. Ask what the invention claimed is, not what is new about it.

**Don'ts:** Strip physical integers as conventional. Identify the inventive concept first. Use prior art to recharacterise elements. Apply a contribution-based analysis.

### Step 2: The MoM question.

On the characterisation reached at Step 1, ask the single question identified at [151] of the allowing reasons: is there a manner of manufacture within s 6 of the Statute of Monopolies? In the CII context, that question is assisted by the framework adopted by the Full Court in *Aristocrat 25* at [131]: is the characterised invention

> (i) an abstract idea manipulated on a computer, which is not a manner of manufacture; or
>
> (ii) an abstract idea implemented on a computer to produce an artificial state of affairs and a useful result, which is a manner of manufacture.

The "on a computer" qualifier is relevant only to computer-implemented inventions. For other inventions, it can be disregarded. In the second limb of this consideration, the term “abstract idea” is asking whether or not the underlying idea is, on its own, abstract. What matters is that the idea, in the characterised invention, is implemented rather than merely manipulated.

If Step 1 has been carried out correctly, Step 2 should ordinarily be straightforward to resolve.

This is the conclusion of MoM consideration. MoM is either established or not.

The remaining requirements of s 18 (novelty, inventive step, usefulness) and s 40 (support, sufficiency, clarity etc.) are separate enquiries, conducted on their own merits.

## 4.2 Manipulation and Implementation: What the Test Requires and Why

The operative question under *Aristocrat 25* is whether the invention produces an artificial state of affairs and a useful result. The Full Court at [131] adopted the manipulation / implementation framework as the operational expression of that question in the CII context. The framework adopted by the allowing reasons and the Full Court is now the authoritative approach for applying *NRCD* in a CII context. But it is the law in the form the Full Court adopted, namely an analytical tool that operates through, and only through, proper characterisation. The framework cannot be detached from the characterisation discipline on which it depends. Adopting the framework as a label, without adopting the characterisation methodology that makes it work, is to adopt only the surface of the law and not its operation.

## Manipulation

Manipulation describes the case where the computer performs the idea without being part of the invention. The most direct way to understand this is to ask whether the invention amounts to performing the idea in or with a computer, without defining how the computer does so in a manner that ties the idea to the physical / hardware components. If the idea could be stated without reference to the computer elements, and the computer is introduced only as the instrument for delivering it or vessel for containing it, the computer is manipulating the idea. The result, where only the idea is present, is not genuinely an artificial state of affairs produced by the combination; it is not an artificial state of affairs because the concept of, or the consequence of, placing a mere scheme into a machine is only an manipulation of the idea. The classic example is *RA*: a method for generating a financial index, in which the idea could be fully stated independently of the computer, and the computer's role was only to be the vessel in which to execute the steps of the method.

## Implementation

Implementation describes the case where the idea cannot be separated from the physical elements through which it operates, because the way the idea works depends on and is defined by those elements. The idea is not merely performed by the computer; it is integrated with specific computational features in a manner that produces the artificial state of affairs as a consequence of that integration.

*Aristocrat 25* provides one example. The configurable symbols were implemented because they were inextricably connected with the player interface and entirely dependent upon other integers of the claim, especially the physical integers (*Aristocrat 25* at [127]). The idea of configurable prize values could not be understood or applied without those physical elements; the two defined each other.

An earlier example, decided well before the current line of authorities, illustrates the same point. In *CCOM*, the invention was a computer-based system for storing, indexing and retrieving Chinese characters using a stroke-based search method. The idea, namely the use of stroke categories to index and retrieve characters, could not exist independently of the specific computer storage architecture, the indexing structure that mapped strokes to characters, and the keystroke-driven retrieval mechanism described in the claims. The hardware was not a vessel in which the idea was performed; it was the medium through which the idea operated, and the idea was defined by reference to it. As in *Aristocrat 25*, the idea and the physical components defined each other, and the artificial state of affairs arose from that integration. The Full Court found a manner of manufacture, and on the *Aristocrat 25* approach the same conclusion follows from the same reasoning.

Where a manner of implementation is described in the claim, the characterisation must reflect it. A finding of manipulation is only available where there is no genuine manner of implementation, or the implementation is in form only and not substance. For example, a claim directed to ‘a computer implemented method of conducting a business, said method comprising: <listing of business steps>’ is in form only.

Resolving *manipulation* vs *implementation* is a consideration that proper characterisation, performed at Step 1, will ordinarily resolve.

### CIIs Are Not Subject to a Special Test

It is important to note that CIIs are not subject to a special test. The manipulation / implementation framework describes the same underlying inquiry that applies to all MoM questions, expressed in terms appropriate to the CII context. An invention that happens to be computer-implemented is assessed in the same way as any other invention: does it, properly characterised, produce an artificially created state of affairs with economic utility?

The computer context gives rise to particular practical questions about how that inquiry is conducted, but it does not create a separate or more demanding threshold. This point should be stated clearly in the Manual. The same framework applies to rules of a game, which are merely a form of abstract idea. However, an apparatus that implements the rules of the game in a physical form will be a manner of manufacture, and would then need to be assessed for novelty, inventive step, and compliance with s 40. The anomaly of treating a computerised implementation as unpatentable where its mechanical equivalent would not be is precisely what the correct approach avoids (*Aristocrat 25* at [134]).

The artificial state of affairs and useful result need not be inventive or ingenious. The ingenuity may reside solely in the claimed idea (*Aristocrat 25* at [122] to [123], adopting the allowing reasons). An invention in which every computer element is entirely conventional may nevertheless be a manner of manufacture, provided the idea is implemented through those elements in a way that produces an artificial state of affairs. The question is the nature of the relationship between the idea and the machine, not the technical sophistication of the machine.

## 4.3 Characterisation: Interdependence and Integration

The most important consideration in the characterisation step is determining how the underlaying idea of the invention and the physical elements of the claim are related in a way that is integral to how the invention works. Interdependence is the key concept for determining this. Interdependence does not require that the relationship be reciprocal or two-way. What is required is that there be a genuine operative relationship: that the physical elements play a role in how the idea works, or that the way the idea works is defined by reference to those physical elements. A one-way dependency, in which the idea can only be understood or applied by reference to specific physical components described in the claim, is sufficient. What is absent in a case of manipulation is any operative relationship of this kind; the computer elements may be present in the claim, but the idea neither depends on them, nor is defined by them.

The specification is the source for the characterisation, read through the eyes of the person skilled in the art and informed by the construction settled in the Precursor Step, before consideration of MoM begins. If the specification describes the computer elements as constitutive of how the invention works, that description must be taken seriously and given full weight. An examiner may not use knowledge of what computer components ordinarily do to re-characterise their role in a claim. What the integers mean and what they do, as understood by the person skilled in the art, was determined at the construction phase, and that understanding governs the characterisation.

The invention need not be in the implementation. The ingenuity may lie entirely in the idea. What is required is not that the implementation itself be inventive, but that the idea be defined in terms of its implementation: that the claim describes a specific way of applying the idea through identified physical components, rather than merely stating the idea and nominating a computer as the instrument for performing it. The difference is between claiming how the idea works

through a physical system, and claiming what the idea achieves with a computer merely as a vehicle.

### 4.4 The Examination Record

Every examination report raising a MoM objection must set out the examiner's reasoning in full: the construction adopted, the characterisation reached, and the specific basis on which the examiner concludes that the invention is merely an abstract idea or a manipulation of an abstract idea rather than an implementation. A conclusion without reasoning is not a lawful objection; it is baseless speculation.

Where the examiner concludes that no MoM objection is warranted, that conclusion and the basis for it should be recorded in the case notes. The record of allowance is as important as the record of objection, both for quality assurance and for the integrity of the examination process.

A MoM objection that is maintained in the face of a substantive response addressing the characterisation of the claimed integers must be supported by fresh reasoning that engages specifically with the arguments advanced. Maintaining a position by reassertion, or on the basis that the examiner is 'not convinced,' is not a lawful objection. The standard is the balance of probabilities, which must be applied by the performance of the balancing of one case against the other, not the examiner's subjective state of conviction that the previously raised objection is not overcome.

## 5. PREVIOUSLY EXAMINED CASES

A practical question arises about the application of the *Aristocrat 25* framework to applications currently in prosecution that received adverse MoM reports under examination practice now superseded.

The Office is required to apply the law as it now stands to all matters before it. This is uncontroversial. The Commissioner and delegated examiners are bound by binding authority on the date of their consideration of a matter, not the date of the original objection. Where a MoM objection raised under the prior framework cannot be sustained under *Aristocrat 25*, the objection must not be maintained simply because it has previously been raised.

In practice, this means:

(a) Outstanding MoM objections raised under the prior framework must be reviewed against the *Aristocrat 25* framework when the next examination action is taken.

(b) Where a MoM objection was based on the absence of an "advance in computer technology", on the use of conventional computer technology, or on the stripping of physical integers from the characterisation, that objection has no foundation in the current law and should be withdrawn.

(c) Where an applicant has filed a substantive response that addresses the characterisation of the claimed integers, the response must be assessed on its merits under the current law. Maintaining a position by reassertion is not a lawful response.

## 6. ECONOMIC / PRODUCTIVITY CONSIDERATIONS

The bulk of this submission focuses on legal reasons for the Manual to correctly reflect the law. There are also economic / productivity reasons, substantially covered in more detail as part of FICPI’s submission in relation to proposed productivity changes. These can be summarised as:

**Examination practice that does not reflect the law is a productivity drain on both the Office and on applicants.** Each adverse MoM report raised on reasoning that the binding authority does not support generates one or more further examination cycles. Each cycle requires examiner time at the Office and attorney time on the applicant's side. The cost of an examination cycle conducted under incorrect reasoning is borne entirely by the applicant and, through delay, by the patent system. None of that cost generates value. It is pure waste.

**The cost is disproportionately borne by start-ups and small to medium enterprises.** Larger applicants have the resources to pursue successive responses, hearings, and appeals. Start-ups and SMEs, which represent a significant proportion of Australian patent filings in computer-implemented technology, frequently abandon applications that should have been granted because the cost of continued prosecution exceeds the commercial value of pursuing them. This is a tax on Australian innovation, levied through examination practice rather than legislation.

**Reduced filings by foreign applicants are a leading indicator of reduced investment.** The anecdotal experience of FICPI members is that foreign applicants are choosing not to file in Australia at the rates they did before the post-2014 examination practice became entrenched. We expect that IP Australia's own filing statistics will confirm this trend. The decision not to file a patent application is, for most applicants, a precursor to the decision not to commercialise the technology in the relevant market, or at least to be reserved in commercialisation investment in Australia. Reductions in CII patent filings are therefore a leading indicator of reductions in technology investment in Australia.

**The remedy is straightforward and costs nothing.** Correcting the Manual to reflect the law as stated in *Aristocrat 25* requires no legislative change, no resource expansion, and no procedural reform. It requires only that the Manual direct examiners to apply the binding authority as it stands as outlined above. The patent system is designed to encourage investment in new technology by providing a clear, low-threshold pathway to protection. Correcting the Manual will restore that pathway. The economic benefit is immediate, the cost is administrative, and the legal position requires it.

## 7. CONCLUSION

The law is settled. *Aristocrat 25* states it. The High Court has confirmed it. The Manual must reflect it.

The March 2026 update does not. It moves in the right direction but stops short. The underlying examination methodology that has been applied since 2014 has not been fully displaced. It has been restated in language drawn from *Aristocrat 25* without embracing its substance.

The High Court's refusal of special leave puts to bed the Commissioner’s stated understand of the law was incorrect, and also confirmed the Full Court's consistency with the binding authority of *NRDC*. Manual provisions that continue to reflect an approach that is not truly consistent with the law as it now stands must be changed. The test for whether the Manual reflects the law is not whether discredited phrases have been removed. It is whether the analytical methodology the binding judgments require has been adopted. Vocabulary can be changed without changing methodology. Methodology cannot be changed without changing how examiners reason. The March 2026 update has changed the vocabulary. It has not changed the methodology. This submission asks for both.

We consider that some examples might assist, but the wrong ones will cause more damages. We propose working with IP Australia to develop appropriate example as a guide to examiners.

MoM is a *ménkăn*: a low threshold that any invention in the useful arts can step over, but one that the spirits the law excludes — abstract ideas, mere information, fine arts — cannot. The Manual casts the examiner as a gatekeeper standing before it, requiring applicants to persuade the gatekeeper that they should be allowed to cross. That inverts the intention of the law.

FICPI Australia welcomes further discussion with IP Australia. We also provide our thanks for the opportunity to contribute to the consultation.

Yours sincerely

Rohan Wallace
President
FICPI Australia