

AIPLA

American Intellectual Property Law Association

May 3, 2019

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via email: tiaofasi@sipo.gov.cn

Re: AIPLA Comments on CNIPA Draft Patent Examination Guidelines
 (“审查指南”)

Dear Sir or Madam,

The American Intellectual Property Law Association (AIPLA) appreciates the opportunity to comment on the draft Patent Examination Guidelines, in response to a request for public feedback from National Intellectual Property Administration of China (“CNIPA”) published on April 4, 2019. A chart listing AIPLA’s detailed comments is attached. A partial summary of the comments is also provided below.

AIPLA is a national bar association of approximately 13,500 members engaged in private or corporate practice, in government service, and in the academic community. AIPLA members represent a wide and diverse spectrum of individuals, companies, and institutions involved directly or indirectly in the practice of patent, trademark, copyright, trade secret, and unfair competition law, as well as other fields of law affecting intellectual property. Our members represent both owners and users of intellectual property. Our mission includes helping establish and maintain fair and effective laws and policies that stimulate and reward invention while balancing the public’s interest in healthy competition, reasonable costs, and basic fairness.

Due to time constraints, AIPLA focused its comments on several articles in the Draft Patent Examination Guidelines. The absence of comments on other articles does not reflect support or lack of support of these articles by AIPLA.

AIPLA commends CNIPA on its efforts to improve examination of patent applications in China. AIPLA appreciates the opportunity to provide comments to the Draft Patent Examination Guidelines. AIPLA would also welcome the opportunity to provide additional comments on any specific revisions to the language of the Draft Patent Examination Guidelines that may be drafted and proposed in response to this initial round of comments.

In general, AIPLA welcomes many of the proposals in the Draft Patent Examination Guidelines, including:

1. The ability to rectify non-conformance with the requirement to include a copy of the Office Action that sets out the unity defect in one divisional application when filing another divisional application.
2. Allowing the deletion of inventors listed on an initial application when filing a divisional application, so long as one inventor remains in common between the two applications.
3. Revisions in the requirements for design applications to eliminate the requirement of at least one view of the complete product.
4. Clarification of the examination of inventive step.
5. The addition of a requirement that an examiner provide proof of common knowledge in response to an objection by the applicant.
6. The ability to prioritize examination or delay examination upon request.

AIPLA provides specific comments to certain proposed language in the draft revisions, for example:

With respect to inventive step, Part II Chapter 4, Article 3.2.1.1 includes proposals to standardize and clarify the analysis of inventive step and to bring greater international harmonization to examination of the claimed invention. Assessing the claimed invention as a “whole,” with consideration of the interaction and relationship of technical features is a helpful step to prevent splitting the invention into isolated features and assessing each separately without considering their interrelationship or the claimed invention as a whole. AIPLA commends these revisions.

With respect to “contribution” analysis, Part II Chapter 4, Article 6.4 includes proposed language that would instruct examiners to use a “contribution” analysis in which claimed features are evaluated in a piecemeal manner, feature-by-feature, as to whether they are considered as contributing to the solution to the technical problem. If a claimed feature is not considered as contributing to the technical solution, the examiner would then be instructed not to allow that feature to influence the determination of whether the claims involve an inventive step, which seems contradictory to the instruction in Article 3.2.1.1 to assess the invention as a whole and might confuse examiners and undermine Article 3.2.1.1 in practice. AIPLA respectfully suggests that the new language

instructing the examiner to use a contribution analysis not be included in the final guidelines.

With respect to “common knowledge,” Part II Chapter 9, Article 4.10.2.2. includes proposals clarifying what evidence must be provided or cited by the examiner to establish common knowledge. AIPLA respectfully submits that the proposed amendments do not go far enough. If the examiner asserts that some element of the claimed invention is “common knowledge,” AIPLA suggests that the examiner should be required to present competent evidence establishing that the element is in fact known in the art, at the time of making the assertion, explaining which claim element(s) the examiner believes that statement covers. If the examiner fails to do so, the rejection based on “common knowledge” should be improper, as it lacks evidentiary support. Only if the examiner presents competent evidence establishing that the subject matter of the claimed invention is common knowledge, i.e., known in the art, should the burden shift to the applicant to refute the examiner’s position. If the final guidelines put the burden on the applicant to object to unsupported citations of “common knowledge” rather than requiring such evidentiary support to be provided with the original citation as suggested above, AIPLA respectfully suggests that the guidelines further provide that the applicant have at least one additional opportunity to make observations or amendments following the examiner’s provision of evidence to support the citation.

We appreciate the opportunity to provide these comments on the Draft Patent Examination Guidelines, and we would be happy to answer any questions that our comments may raise.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sheldon H. Klein", with a stylized flourish at the end.

Sheldon H. Klein
President
American Intellectual Property Law Association

Attachment: Table of AIPLA Comments to Patent Examination Guidelines (Draft)

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征求意见稿 (修订格式)	English Translation of Draft for Public Opinion (Marked Version)	Comments
<p>第一部分第一章</p> <p>5.1.1 (3) 分案申请的递交时间</p> <p>但是, 因分案申请存在单一性的缺陷, 申请人按照审查员的审查意见再次提出分案申请的情况除外。对于此种除外情况, <u>再次分案申请的递交时间应当根据该存在单一性缺陷的分案申请审核, 不符合规定的, 不得分案。</u>申请人再次提出分案申请的同时, 应当提交审查员发出的指明了单一性缺陷的审查意见通知书或者分案通知书的复印件。未提交符合规定的审查意见通知书或者分案通知书的复印件的, <u>不能按照除外情况处理。</u>对于不符合规定的, 审查员应当发出补正通知书, 通知申请人补正。期满未补正的, 审查员应当发出视为撤回通知书。申请人补正后仍不符合规定的, 审查员应当发出分案申请视为未提出通知书, <u>并作结案处理。</u></p>	<p>Part I Chapter 1</p> <p>5.1.1 (3) Submission time of divisional application</p> <p>However, with the exception that where another divisional application is filed by the applicant according to the Office Action made by the examiner due to a unity defect in the divisional application. Regarding this exception the filing date of the other divisional application shall be examined according to the divisional application having the unity defect. Where there is any inconformity with the provisions, the other divisional application shall not be filed. The applicant, when filing another divisional application, shall submit a copy of the Office Action indicating the unity defect or of the Notification to Make Divisional Application issued by the examiner. Where the copy of the Office Action or of the Notification to Make Divisional Application in conformity with the provisions is not submitted, the application shall not be treated as exception. Where the copy is not in conformity with the provisions, the examiner shall issue the</p>	<p>AIPLA welcomes the proposal to allow a divisional application to be filed out of a prior divisional application that has a unity defect noted by the examiner, even if the original (“root”) application is no longer pending. The draft language, however, appears vague and might lead to uncertain or inconsistent outcomes. AIPLA suggests that the wording of the related time limits could be further clarified to mimic that of the first and second paragraphs of Article 5.1.1 (3): 2 months after allowance, three months after rejection, or during the pendency of an appeal of the prior divisional.</p> <p>AIPLA welcomes the CNIPA’s proposal to allow a divisional application filed on a previously filed divisional to be maintained, in the event of a lack of conformance with the requirement to submit the Office Action identifying a unity defect, by rectifying the non-conformance with the later filing of the missing Office Action in response to a Notification to Make Rectification.</p>

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	Notification to Make Rectification notifying the applicant to make rectification. Where no rectification is made within the time limit, the examiner shall issue the Notification that Application Deemed to be withdrawn. Where the copy is still not in conformity with the provisions after rectification, the examiner shall issue the Notification that Divisional Application Deemed Not to Have Been filed and make a decision to close the case.	
<p>5.1.1 (4) 分案申请的申请人和发明人</p> <p>分案申请的申请人应当与提出分案申请时原申请的申请人相同，不相同的，应当提交有关申请人变更的证明材料。针对分案申请提出再次分案申请的申请人应当是该分案申请的申请人。不符合规定的，审查员应当发出分案申请视为未提出通知书。</p> <p>如果原申请的申请人需要转让原申请的申请权（或专利权），则应当在原申请的著录项目变更手续合格之后再提出分案申请。如果分案申请的申请人需要转让该分案申请的申请权（或专利权），则应当在分案申请提出的同时或之后，办理著录项目变更手续。</p> <p>分案申请的发明人也应当是原申请的发</p>	<p>5.1.1 (4) Applicant and inventor of divisional application</p> <p>The applicant of a divisional application shall be the same as that of the initial application <u>when the divisional application is filed.</u> Where this is not the case, a document certifying the change of the applicant shall be submitted. <u>The applicant who files another divisional application based on an already filed divisional application shall be the applicant of the divisional application.</u> <u>Where there is any inconformity with the provisions, the examiner shall issue the Notification that Divisional Application Deemed Not to Have Been Filed.</u></p>	<p>AIPLA commends the proposal to allow inventors listed in the initial application to be deleted from divisional application so long as one originally listed inventor is listed as an inventor on the divisional application. AIPLA also understands the benefit in requiring the applicant be the same in the divisional application as in the parent, either as originally listed or as in amended bibliographic data, as this is necessary to establish the applicant's right to file the divisional application. AIPLA respectfully requests that the applicant be allowed to file the title document (e.g., assignment, gift, name</p>

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<p>明人或者是其中的部分成员。<u>针对分案申请提出的再次分案申请的发明人应当是该分案申请的发明人或者是其中的部分成员。</u>对于不符合规定的, 审查员应当发出补正通知书, 通知申请人补正。期满未补正的, 审查员应当发出视为撤回通知书。</p>	<p><u>If the applicant of the initial application needs to transfer the right to apply for a patent (or the patent right) of the initial application, the divisional application shall be filed after the formalities of a change in the bibliographic data of the initial application have been passed. If the applicant of the divisional application needs to transfer the right to apply for a patent (or the patent right) of the divisional application, the formalities of a change in the bibliographic data shall be gone through at the time of or after filing of the divisional application.</u></p> <p>The inventor of a divisional application shall be the inventor or part of the inventors of the initial application. <u>The inventor who files another divisional application based on an already filed divisional application shall be the inventor or part of the inventors of the divisional application.</u> Where there is any inconformity with the provisions, the examiner shall issue the Notification to Make Rectification notifying the applicant to make rectification. Where no rectification is made within the time limit, the examiner shall issue the Notification that</p>	<p>change, etc.) from a prior application with the divisional application, including submitting an informational copy where the formalities of the change in bibliographic data at the CNIPA are not completed at the time of such filing. AIPLA respectfully requests clarification of a rectification process in the event that a divisional application is filed by a different applicant. May the applicant correct either the parent application or the divisional application to correct the applicant? Can this be done by later recording of assignment documents?</p>

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<p>第一部分第一章 6.7 著录项目变更 6.7.2.2 专利申请权（或专利权）转移</p> <p>(2) 申请人（或专利权人）因权利的转让或者赠与发生权利转移提出变更请求的，应当提交双方签字或者盖章的转让或者赠与合同。<u>必要时审查员应当核实双方主体资格。需要核实双方主体资格的情形例如：有当事人对专利申请权（或专利权）转让或赠与有争议的；当事人办理专利申请权（或专利权）转移手续，多次提交的证明文件相互矛盾的；转让或赠与协议中申请人或专利权人的签字或盖章与案件中记载的签字或盖章不一致的。</u>该合同是由单位订立的，应当加盖单位公章或者合同专用章。公民订立合同的，由本人签字或者盖章。有多个申请人（或专利权人）的，应当提交全体权利人同意转让或者赠与的证明材料。</p>	<p>Application Deemed to be Withdrawn.</p> <p>Part I Chapter 1 6.7 Changes in Bibliographic Data 6.7.2.2 Transfer of Right to Apply for a Patent (or Patent Right)</p> <p>(2) Where the right of the applicant (or patentee) has been transferred because of assignment or gift, and a request for a change in the bibliographic data is submitted, the contract on the assignment or gift <u>signed or sealed by both parties</u> shall be submitted. <u>If necessary, the examiner shall examine qualification of subject of both parties. The circumstances in which it is required to examine qualification of subject of both parties are, for example: the party concerned has objection to assignment or gift of the right to apply for a patent (or the patent right); the party concerned registers the change in the ownership of the right to apply for a patent (or patent right), but certified documents filed for several times are contradictory to each other; the signature or seal of the applicant or patentee in the agreement of assignment or gift is inconsistent</u></p>	<p>AIPLA respectfully requests that the guidelines not require the contract of assignment or gift to be signed by both parties. This creates practical difficulties and challenges particularly for foreign applicants and is not required under the Patent Law of the People’s Republic of China. Rather, the signature of the assignee of the application should be sufficient.</p> <p>If the final guidelines include a requirement for signatures by both parties to the contract of assignment or gift, AIPLA respectfully requests that a “grandfather clause” be included allowing use of a contract of assignment or gift executed before the effective date of the revised guidelines.</p> <p>AIPLA also requests clarification that the signature or seal may be different for the same entity due to different authorized signers executing the documents. AIPLA further respectfully suggests that CNIPA accept contracts of assignments or gift at face value</p>

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	<p><u>with signature or seal disclosed in the case.</u> If such a contract is concluded by any entity, the official seal of the entity or the seal specially used for concluding contracts shall be affixed. If the contract is concluded by any individual, it shall be signed or sealed by the person himself. Where there are two or more applicants (or patentee), a document certifying that all the right owners have agreed on the assignment or gift shall be submitted.</p>	<p>with the applicant being allowed to correct mistakes. The courts should resolve disputes over title or punish any fraudulent activity by those submitting or causing fraudulent documents to be submitted.</p>
<p>第一部分第三章 4.2 外观设计图片或者照片 就包括图形用户界面的产品外观设计而言,应当提交整体产品外观设计视图。图形用户界面为动态图案的,申请人应当至少提交一个状态的上述整体产品外观设计视图,对其余状态可仅提交关键帧的视图,所提交的视图应当能唯一确定动态图案中动画的变化趋势。</p>	<p>Part I Chapter 3 4.2 Drawings or Photographs So far as a product that includes graphical user interface is concerned, views of the complete product design shall be submitted. If the graphical user interface is a dynamic pattern, the applicant shall at least submit a view of the complete product with one state of the GUI and may only submit views offer other states. The views submitted shall be able to uniquely determine the changing trend of the animation in the dynamic pattern.</p>	<p>AIPLA welcomes the proposed deletion of the prior requirement to submit at least one view of the “complete product” in a design application on a GUI.</p>

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<p>4.3 简要说明</p> <p>.....</p> <p>(7) 对于包括图形用户界面的产品外观设计专利申请,必要时说明图形用户界面的用途、图形用户界面在产品中的区域、人机交互方式以及变化状态等。</p>	<p>4.3 Brief Explanation</p> <p>.....</p> <p>(7) So far as a product that includes graphical user interface is concerned, the use of the graphical user interface, the area of the graphical user interface in the product, the human-machine interaction manner, the variation states and the like shall be explained when necessary.</p>	
<p>4.4 涉及图形用户界面的产品外观设计</p> <p><u>涉及图形用户界面的产品外观设计是指产品设计要点包括图形用户界面的设计。</u></p>	<p>4.4 Product Design Involving Graphical User Interface</p> <p><u>Product design involving graphical user interface is a design the essential design features of the which include the graphical user interface.</u></p>	
<p>4.4.1 产品名称</p> <p><u>包括图形用户界面的产品外观设计名称,应表明图形用户界面的主要用途和其所应用的产品,一般要有“图形用户界面”字样的关键词,动态图形用户界面的产品名称要有“动态”字样的关键词。如:“带有温控图形用户界面的冰箱”、“手机的天气预报动态图形用户界面”。</u></p>	<p>4.4.1 Name of the product</p> <p><u>The name of the design of the product that includes graphical user interface shall indicate the main use of the graphical user interface and the product to which the graphical user interface is applied. The name generally shall contain such keywords as “graphical user interface”. The name of product that includes dynamic graphical</u></p>	

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<p>不应笼统仅以“图形用户界面”名称作为产品名称，如：“软件图形用户界面”、“操作图形用户界面”。</p>	<p><u>user interface shall contain such keyword as “dynamic”. For example, the name may be “Refrigerator with Graphical User Interface for Temperature Control”, “Graphical User Interface for Weather Forecast for Mobile Phone”.</u></p> <p><u>The name of the product generally not shall not contain “graphical user interface” only, for example, the name of the product shall not be “Software Graphical User Interface”, “Operation Graphical User Interface”.</u></p>	
<p>4.4.2 外观设计图片或照片</p> <p>包括图形用户界面的产品外观设计应当满足本部分第三章第 4.2 节的规定。设计要点仅在于图形用户界面的，可以提交图形用户界面所涉及面的一幅正投影产品视图。视图应能清楚地显示图形用户界面所应用的产品种类，并清楚地显示图形用户界面设计及其在产品中的大小、位置和比例关系。</p> <p>图形用户界面为动态图案的，申请人应当至少提交一个状态的图形用户界面所涉及面的正投影产品视图作为主视图；其余状态可仅提交图形用户界面关键帧的视图作为变化状态图，所提交的视图应能唯一确定动态图案中动画完整的变化趋势。标注变化状态</p>	<p>4.4.2 Drawings or Photographs</p> <p><u>The design of the product that includes graphical user interface shall comply with the provisions set forth in Section 4.2 of Chapter 3 of this part. If the essential features of the design only lie in the graphical user interface, one orthographic projection view of a side of the product showing the graphical user interface may be submitted. The view submitted shall clearly indicate the category of the product to which the graphical user interface is applied, and shall clearly indicate the design of the graphical user interface and its size, position and applicant shall at least</u></p>	

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<p><u>图时，应根据动态变化过程的先后顺序标注。</u></p> <p><u>对于投影设备类图形用户界面的产品外观设计而言，应当提交清楚的投影设备的视图和图形用户界面的视图。</u></p>	<p><u>submit one orthographic projection view of a side of the product showing one state of the graphical user interface as front view and, for other states, the applicant may only submit views of key frames of the graphical user interface as views of variation states. The views submitted shall be able to uniquely determine the changing trend of the animation in the dynamic pattern. The views of variation states shall be annotated in accordance with the sequence of the dynamic changing process, when annotating the views of variation states. So far as the design of graphical user interface for such product as projector is concerned, views clearly indicating such product and views clearly indicating the graphical user interface shall be submitted.</u></p>	
<p>4.4.3 简要说明</p> <p><u>包括图形用户界面的产品外观设计应在简要说明中清楚说明图形用户界面的用途，并与产品名称中体现的用途相对应。必要时可说明图形用户界面在产品中的区域、人机交互方式以及变化状态等。</u></p>	<p>4.4.3 Brief Explanation</p> <p><u>For a design of the product that includes graphical user interface, the use of the graphical user interface shall be clearly explained in the brief explanation and shall correspond to the use of the graphical user interface as indicated in the name of the</u></p>	<p>AIPLA respectfully requests clarification that for dynamic GUI designs—which are shown by a plurality of discrete, sequential figures at different states of the dynamic GUI—the inclusion of explanatory language be either permitted or mandated. This could take the form of: “The appearance of the animated</p>

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	<u>product. The area of the graphical user interface in the product, the human-machine interaction manner, the variation states and the like may be explained when necessary.</u>	[icon/interface] sequentially transitions between the images shown in FIGS. 1-___. The process or period in which one image transitions to another forms no part of the claimed design.”
<p>第二部分第四章</p> <p>3.2.1.1 判断方法</p> <p>判断要求保护的发明相对于现有技术是否显而易见,通常可按照以下三个步骤进行。</p> <p>(1) 确定最接近的现有技术</p> <p>.....</p> <p>(2) 确定发明的区别特征和发明实际解决的技术问题</p> <p>在审查中应当客观分析并确定发明实际解决的技术问题。为此,首先应当分析要求保护的发明与最接近的现有技术相比有哪些区别特征,然后根据该区别特征在<u>要求保护的发明中所能达到的技术效果</u>确定发明实际解决的技术问题。从这个意义上说,发明实际解决的技术问题,是指为获得更好的技术效果而需对最接近的现有技术进行改进的技术任务。</p> <p>.....</p>	<p>Part II Chapter 4</p> <p>3.2.1.1 Approach to Assessment</p> <p>Usually the following three steps are followed to determine whether a claimed invention is obvious as compared with the prior art.</p> <p>(1) Determining the closest prior art</p> <p>.....</p> <p>(2) Determining the distinguishing features of the invention and the technical problem actually solved by the invention</p> <p>During examination, the examiner shall objectively analyze and determine the technical problem actually solved by the invention. For this purpose, the examiner shall first determine the distinguishing features of the claimed invention as compared with the closest prior art and then determine the technical problem that is actually solved by the invention on the basis of</p>	<p>AIPLA commends the proposal to standardize and clarify the analysis of inventive step. The proposed changes bring the Chinese standard more closely into alignment with internationally accepted standards for the determination of inventive step.</p> <p>AIPLA further commends the proposal to assess the claimed invention as a “whole,” with consideration of the interaction and relationship of technical features. This is helpful to prevent splitting the invention into isolated features and assessing each separately without considering their interrelationship or the combination of the claimed features as a whole.</p>

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<p>重新确定的技术问题可能要依据每项发明的具体情况而定。作为一个原则，发明的任何技术效果都可以作为重新确定技术问题的基础，只要本领域的技术人员从该申请说明书中所记载的内容能够得知该技术效果即可。<u>对于功能上彼此相互支持、存在相互作用关系的技术特征，应整体上考虑所述技术特征和它们之间的关系在要求保护的发明中所达到的技术效果。</u></p> <p>(3) 判断要求保护的发明对本领域的技术人员来说是否显而易见</p> <p>.....</p>	<p>the technical effect of the distinguishing features <u>in the claimed invention</u>. The technical problem actually solved by the invention, in this sense, means the technical task in improving the closest prior art to achieve a better technical effect.</p> <p>.....</p> <p>The redetermined technical problem may depend on the particular situations of each invention. As a principle, any technical effect of an invention may be used as the basis to redetermine the technical problem, as long as the technical effect could be recognized by a person skilled in the art from the contents set forth in the description. <u>For the technical features which functionally support each other and have interaction with each other, the technical effect of the technical features and their relationship in the claimed invention shall be considered as a whole.</u></p> <p>(3) Determining whether or not the claimed invention is obvious to a person skilled in the art</p> <p>.....</p>	
第二部分第四章	Part II Chapter 4	AIPLA respectfully requests clarification that

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<p>6.4 对要求保护的发明进行审查</p> <p>发明是否具备创造性是针对要求保护的发明而言的，因此，对发明创造性的评价应当针对权利要求限定的技术方案进行。发明对现有技术作出贡献的技术特征，例如，使发明产生预料不到的技术效果的技术特征，或者体现发明克服技术偏见的技术特征，应当写入权利要求中；否则，即使说明书中有记载，评价发明的创造性时也不予考虑。此外，创造性的判断，应当针对权利要求限定的技术方案整体进行评价，即评价技术方案是否具备创造性，而不是评价某一技术特征是否具备创造性。<u>但是，权利要求中对技术问题的解决没有作出贡献的技术特征，对评价权利要求限定的技术方案是否具备创造性不产生影响。例如，一项涉及照相机的发明，该发明的实质在于照相机快门的改进，其技术问题的解决取决于快门结构或者曝光时间控制，即使申请人将照相机其他固有部件如镜头、取景器等部件写入权利要求中，这些技术特征也与照相机快门改进的技术问题无关，因此，它们属于对改进照相机快门这一技术问题的解决没有作出贡献的技术特征。</u></p>	<p>6.4 Examination on the Claimed Invention</p> <p>The determination of whether an invention involves an inventive step shall be directed to the claimed invention, and therefore the evaluation of inventive step shall concern the technical solutions as defined in the claims. The technical features by which the invention makes contribution over the prior art, such as the technical features bringing about unexpected technical effects for the invention, or the technical features reflecting how the invention overcomes a technical prejudice, shall be included in the claims; otherwise, they shall not be taken into account in evaluating the inventive step of the invention, even if they have been set forth in the description. Moreover, the evaluation of inventive step shall be directed to the whole of each technical solution defined in the claims, that is, it is the technical solution as a whole, rather than the individual technical features, that shall be evaluated as to whether involving an inventive step. <u>However, the technical features in claims which have not made contribution over the solution of the technical problem do not</u></p>	<p>the technical problem could be either the technical problem set out in the specification, or in applicant’s remarks or observations during prosecution such as in a response to the Examination Report, or otherwise made of record in the prosecution history. AIPLA notes that the technical problem may change as a result of amendments in the claims or may not have been originally set out in the specification.</p> <p>AIPLA commends the further step of requiring that the technical solution be included in the claims, otherwise it will not be considered in determining patentability.</p> <p>The proposed amendment in this section would provide “contribution” analysis to exclude or discount features recited in the claims from the inventiveness analysis if such features are not considered to contribute to the solution to the technical problem. AIPLA respectfully submits that this analysis would fail to consider the claim as a whole (would rather invite the examiner to analyze the claim in a</p>

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	<p><u>influence the determination of whether the technical solutions as defined in the claims involve an inventive step. For example, for an invention of a camera whose substantive point lies in an improvement to the shutter of the camera, the solution of the technical problem depends on the structure of the shutter or timing control of exposure to light. Even if the applicant incorporates such other inherent parts of the camera as lens, viewfinder etc. into the claims, these features have no relevance to the technical problem regarding the improvement to the shutter of the camera and thus belong to the technical features which have not made contribution over the solution of the technical problem of the improvement to the shutter of the camera.</u></p>	<p>piecemeal manner) and is inconsistent with other portions of the Guidelines requiring that the subject matter of the claim <i>as a whole</i> be assessed, as well as inconsistent with international standards for inventive step. The claim should be considered as a whole and limitations that do not contribute to solving the technical problem the invention addresses should be considered as well and may fail to establish non-obvious differences between the claimed invention as a whole and the prior art only after such consideration. AIPLA respectfully suggests that the proposed contribution analysis instructions not be included the final guidelines.</p>
<p>第二部分第八章 4.2 阅读申请文件并理解发明 审查员在开始实质审查后,首先要仔细阅读申请文件,并充分了解背景技术整体状况,力求准确地理解发明。重点在于了解发明所要解决的技术问题,理解解决所述技术问题的技术方案和该技术方案所能带来的</p>	<p>Part II Chapter 8 4.2 Reading of Application Documents and Understanding of Invention After the substantive examination is started, the examiner shall read the application documents carefully first, <u>fully understand the overall situation of the background art,</u> and try to</p>	<p>AIPLA commends the proposal to clarify that understanding the invention requires a close reading of the application and understanding of the background art as a whole, with an emphasis on understanding the technical problem and the technical effect of the technical solution. AIPLA further notes that a</p>

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<p><u>技术效果</u>, 并且明确该技术的全部必要技术特征, 特别是其中区别于背景技术的特征, 进而明确发明相对于背景技术所作出的改进还应了解该技术方案所能带来的技术效果。审查员在阅读和理解发明时, 可以作必要的记录, 便于进一步审查。</p>	<p>understand the invention accurately. The examiner shall put emphasis on understanding the technical problem to be solved and, the technical solution for solving said technical problem <u>and the technical effect produced by the technical solution</u>, figuring out all the essential technical features of the technical solution, especially those which are different from that of the background art, and understanding the technical effect produced by said technical solution further figuring out the improvement to the invention as compared with the background art. Necessary notes may be taken when reading and figuring out the invention so as to facilitate further examination.</p>	<p>fuller understanding of the above will develop during examination upon the examiner's review of arguments and amendments that applicant may submit during prosecution of the application.</p>
<p>4.10.2.2 审查意见通知书正文</p> <p>根据申请的具体情况和检索结果, 通知书正文可以按照如下几种方式撰写。</p> <p>……</p> <p>(4) 申请由于不具备新颖性或创造性而不可能被授予专利权的, 审查员在通知书正文中, 必须对每项权利要求的新颖性或者创造性提出反对意见, 首先对独立权利要求进行评述, 然后对从属权利要求一一评述。但</p>	<p>4.10.2.2 Text of Office Action</p> <p>The text of the Office Action may be drafted in the following ways according to circumstances and the result of the search of the application.</p> <p>……</p> <p>(4) Where it is impossible to grant the patent right to an application because of the lack of novelty or inventive step, the examiner shall</p>	<p>AIPLA welcomes the proposed amendment clarifying what evidence must be provided or cited by the examiner to establish common knowledge. AIPLA respectfully submits that the proposed amendments do not go far enough. Rather, if the examiner asserts that some element of the claimed invention is "common knowledge," the examiner should be required to present competent evidence establishing</p>

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<p>是, 在权利要求较多或者反对意见的理由相同的情况下, 也可以将从属权利要求分组加以评述; 最后还应当指出说明书中也没有可以取得专利权的实质内容。</p> <p>.....</p> <p>审查员在审查意见通知书中引用的本领域的公知常识应当是确凿的, 如果申请人对审查员引用的公知常识提出异议, 审查员应当能够<u>提供相应的证据予以证明</u>说明理由或<u>说明理由提供相应的证据予以证明</u>。在审查意见通知书中, 审查员将权利要求中对<u>技术问题的解决作出贡献的技术特征认定为公知常识时, 通常应当提供证据予以证明。</u></p>	<p>provide his objection on novelty and inventive step to each claim in the text of the Office Action, first to the independent claim, and then to the dependent claims one by one. However, if there are too many claims or the reason of objection is the same, the dependent claims can be evaluated in group. It shall be pointed out in the end that there is no substantive content to be granted the patent right even in the description.</p> <p>.....</p> <p>The common knowledge of the art cited in the Office Action by the examiner shall be accurate. Where the applicant has objections to the common knowledge cited by the examiner, the examiner shall <u>provide corresponding evidence for proof</u> state the reasons or <u>state the reasons</u> provide corresponding evidence for proof. <u>In the Office Action, where the examiner takes the technical features in claims which have made contribution over the solution of a technical problem as common knowledge, the evidence for proof generally shall be provided.</u></p>	<p>that the element is in fact known in the art, at the time of making the assertion, explaining which claim element(s) the examiner believes that statement covers. If the examiner fails to do so, the rejection based on “common knowledge” should be improper, as it lacks evidentiary support. It is simply a statement of the examiner’s position. The concept of placing the burden on the applicant is also flawed in that it forces the applicant to refute the examiner’s position even if the examiner has failed to present competent evidence. Only if the examiner has presented competent evidence establishing that the subject matter of the claimed invention is common knowledge, that is, known in the art, should the burden shift to the applicant to refute the examiner’s position.</p> <p>If examiners were to be instructed by the guidelines to assert that something is “common knowledge” without providing supporting evidence, it would invite a piecemeal examination, in which the examiner</p>

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		<p>cites common knowledge unsupported by evidence, the applicant then objects to the lack of evidence, after which the examiner provides evidence, and then the applicant would need to argue or object that the cited evidence is insufficient or otherwise does not support the assertion (which would only be possible if the examiner allowed the applicant at least two opportunities to make observations or amend the application documents, not merely the one opportunity set out in the guidelines (e.g., Part I Chapter 1, Article 2 (3)).</p> <p>If the final guidelines put the burden on the applicant to object to unsupported citations of “common knowledge” rather than requiring such evidentiary support to be provided with the original citation as suggested above, AIPLA respectfully suggests that the guidelines provide that the applicant have at least one additional opportunity to make observations or amendments following the examiner’s provision of evidence to support the citation.</p>
第二部分第七章	Part II Chapter 7	AIPLA commends clarifying what specific

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<p>2. 审查用检索资源资料</p> <p>2.1 检索用专利文献资源</p> <p>发明专利申请实质审查程序中的检索，主要在检索用专利文献中进行。检索用专利文献主要包括：电子形式(机检数据库和光盘)的多国专利文献；纸件形式的、按国际专利分类号排列的审查用检索文档和按流水号排列的各国专利文献；缩微胶片形式的各国专利文献。</p> <p>专利局的电子形式的专利文献主要包括：中国发明专利申请公开说明书、中国发明专利说明书、中国实用新型专利说明书、欧洲专利申请公开说明书、专利合作条约的国际专利申请公开说明书、美国专利说明书、日本专利申请公开说明书和日本实用新型专利说明书及多国专利分类文摘等。专利局的纸件形式的专利文献主要包括：中国发明专利申请公开说明书、中国发明专利说明书、中国实用新型专利说明书、美国专利说明书、欧洲专利申请公开说明书、专利合作条约的国际专利申请公开说明书及多国专利分类文摘等。</p> <p>发明专利申请实质审查程序中应当检索专利文献，其包括：中文专利文献和外文专利</p>	<p>2. Search Documentation <u>Resource</u> Used in Examination</p> <p>2.1 Patent Documentation <u>Resource</u> Used in Search</p> <p>The search in substantive examination procedure for an invention application is mainly conducted in patent documentation. The patent documentation used in search mainly includes the patent documents of various countries in electronic form (either in computer searchable databases or in CD-ROMs), the search files in paper form for use in examination which are arranged according to IPC order, the patent documents of various countries in paper form which are arranged according to serial number, and the patent documents of various countries in microfiche.</p> <p>The patent documentation in electronic form collected in the Patent Office mainly includes: the publication of Chinese invention applications, the publication of Chinese invention patents, the publication of Chinese utility model patents, the publication of European patent applications, the international</p>	<p>sources of patent and non-patent literature should be searched. This should provide greater consistency and uniformity.</p>

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<p>文献。</p> <p>专利检索与服务系统(简称S系统)中供审查员检索使用的专利文献数据库主要包括：<u>中国专利文摘数据库(CNABS)、世界专利文摘数据库(SIPOABS)、德温特世界专利索引数据库(DWPI)、外文数据库(VEN)、中国专利全文文本代码化数据库(CNXT)和国际专利全文文本数据库(WOTXT)等。</u></p>	<p>publication of patent applications under the PCT, the publication of US patents, the publication of Japanese patent applications, the publication of Japanese utility model patents, and patent abstracts of various countries. The patent documentation in paper form collected in the Patent Office mainly includes: the publication of Chinese invention applications, the publication of Chinese invention patents, the publication of Chinese utility model patents, the publication of US patents, the publication of European patent applications, the international publication of patent applications under the PCT, and patent abstracts of various countries.</p> <p><u>The search of the patent documentation shall be conducted in the procedures of substantive examination for an invention patent application, including: Chinese patent documentation and foreign patent documentation.</u></p> <p><u>The patent documentation databases provided for the examiner to use in search in the patent search and service system (abbreviated as S System) mainly include: China Patent Abstract Database (CNABS), World Patent</u></p>	

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	<p><u>Abstract Database (SIPOABS), Derwent World Patent Index Database (DWPI), Virtual or Logical Database (VEN), China Patent Full-Text Database (CNTXT) and World Patent Full-text Database (WOTXT) etc.</u></p>	
<p>2.2 检索用非专利文献资源 审查员除在专利文献中进行检索外,还应当查阅检索用非专利文献。<u>在 S 系统和互联网中可获取的检索用非专利文献</u>主要包括: 电子或纸件等形式的国内外科技图书、期刊、学位论文、标准/协议、索引工具及手册等。</p>	<p>2.2 Non-Patent Literature <u>Resource Used in-Search</u> In addition to searching in patent documentation, the examiner shall also search non-patent literature. The non-patent literature <u>used in-search accessible in the S System and internet</u> mainly includes foreign and domestic scientific and technological books, periodicals, <u>dissertations, standards/protocols,</u> index tools and manuals <u>in paper form or electronic form.</u></p>	
<p>5.3 确定检索的技术领域 通常, 审查员在申请的主体所属的技术领域中进行检索, 必要时应当把检索扩展到功能类似<u>或应用类似</u>的技术领域。所属技术领域是根据权利要求书中限定的内容来确定的, 特别是根据明确指出的那些特定的功能和用途以及相应的具体实施例来确定的。审查员确定的表示发明信息的分类号, 就是</p>	<p>5.3 Determining the Technical Fields to be Searched The examiner shall usually carry out the search in the technical field to which the subject matter of the application pertains. When necessary, the scope of the search shall be extended to the analogous technical fields <u>in terms of function or application.</u> The technical</p>	

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<p>申请的主题所属的技术领域。功能类似或应用类似的技术领域是根据申请文件中揭示出的申请的主题所必须具备的本质功能或者用途来确定，而不是只根据申请的主题的名称，或者申请文件中明确指出的特定功能或者特定应用来确定。例如，茶叶搅拌机和混凝土搅拌机属于功能类似的技术，因为搅拌是两者都必须具备的本质功能。同理，切砖机和切饼干机也是功能类似的技术。再如，一件申请的独立权利要求限定了具有某种结构特征的电缆夹子。如果在电缆夹子所属的技术领域中检索不到相关的文件，应当把检索扩展到有关管夹和其他类似的夹子的技术领域，因为这些夹子具有与电缆夹子类似的本质功能，因此很可能具有申请的独立权利要求中限定的结构特征。也就是说，进行扩展检索时，对手可能包含有与申请的主题的全部特征或者某些特征相关的内容的文献都应当检索。</p>	<p>field to which the subject matter of the application pertains is determined according to the contents of the claims, especially the specific function and use, as well as the corresponding specific embodiments which are clearly indicated. The classification symbol assigned by an examiner which indicates the invention information is the technical field to which the subject matter of the application pertains. The analogous technical fields <u>in terms of function or application</u> are determined according to the essential function or use that the subject matter of the application as revealed in the application documents has to possess, and not only the title of the subject matter of the application, or the specific function <u>or specific application</u> expressly indicated in the application documents. For example, a tea mixer and a concrete mixer are in the analogous fields, because mixing is the essential function of the two. Similarly, a brick cutting machine and a biscuit cutting machine also are in the analogous fields. For another example, a cable clamp having certain structural characteristics is defined in an independent claim</p>	

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	<p>of an application. If no relevant document can be found in the technical field to which the cable clamp pertains, the search shall be extended to the technical fields of pipe clamps and other similar clamps. These clamps possess the similar essential function with the cable clamp, thus it is quite possible for them to have the structural characteristics as defined in the independent claim. In other words, when an extended search is made, the search shall cover all the documents that may contain contents relevant to all or some of the features of the subject matter of the application.</p>	
<p>5.4.2 确定检索要素</p> <p>.....</p> <p>在确定了基本检索要素之后,应该结合检索的技术领域的特点,确定这些基本检索要素中每个要素在计算机检索系统中的表达形式,例如关键词、分类号、化学结构式等。为了全面检索,通常需要尽可能地以关键词、分类号等多种形式表达这些检索要素,并将用不同表达形式检索到的结果合并作为针对该检索要素的检索结果。</p> <p>在选取关键词时,一般需要考虑相应检</p>	<p>5.4.2 Determining Search Elements</p> <p>.....</p> <p>After the basic search elements have been determined, the examiner shall, taking account of the features of the technical fields to be searched, determine the expressing means of each element in a computer search system, such as keywords, classification symbols, and chemical structural formulas. In order to make a complete search, it is normally required to express these search elements as far as possible</p>	

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<p>索要素的各种同义或近义表达形式,而且在必要时还需要考虑相关的上位概念、下位概念以及其他相关概念及其各种同义或近义表达形式。</p> <p>.....</p>	<p>by various means including keywords and classification symbols, and add the search results obtained from the various means altogether to form the search results of said search elements.</p> <p>In selection of keywords, normally the various synonyms and approximate expressions of the corresponding search element need to be taken into account, and when necessary, the relevant generic term, specific term, other relevant terms, and the various synonyms and approximate expressions thereof, shall also be considered.</p> <p>.....</p>	
<p>6. 对发明专利申请的检索</p> <p>6.2 检索过程</p> <p>审查员通常根据申请的特点,按照初步检索、常规检索和扩展检索的顺序进行检索,浏览检索结果并对新颖性和创造性进行判断,直到符合本章第 8 节所述的中止检索的条件。</p>	<p>6. Search on an Invention Application</p> <p><u>6.2 Procedure of Search</u></p> <p><u>In general, the examiner carries out the search according to the characteristics of the application and in the order of preliminary search, conventional search and extended search, reviews the search results and assesses the novelty and inventive step until the conditions of the termination of search described in Section 8 of this chapter are met.</u></p>	

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<p>6.2.1 初步检索</p> <p>审查员应利用申请人、发明人、优先权等信息检索申请的同族申请、母案/分案申请、申请人或发明人提交的与申请的主题所属相同或相近技术领域的其他申请，还可以利用语义检索，以期快速找到可以对申请的主题的新颖性、创造性有影响的对比文件。</p>	<p><u>6.2.1 Preliminary Search</u></p> <p><u>The examiner shall utilize the information such as the applicant, the inventor and priority etc. to search the patent family of the application, initial/divisional application, other applications which pertain to the same or analogous technical fields as the subject matter of the application and submitted by the applicant or inventor, and the examiner may also utilize semantic search, in order to quickly find out the reference document which may influence the novelty, inventive step of the subject matter of the application.</u></p>	
<p>6.2.2 常规检索</p> <p>常规检索是在申请的主题的所属技术领域进行的检索。</p> <p>所属技术领域是申请的主题所在的主要技术领域，在这些领域中检索，找到密切相关的对比文件的可能性最大。因此，审查员首先应当在这些领域的专利文献中进行检索。</p> <p>对申请的其他应检索的主题，应当在其所属和相关的技术领域采用类似的方法进行检索。</p> <p>如果通过本节中的检索，发现确定的技</p>	<p><u>6.2.2 Conventional Search</u></p> <p><u>The conventional search is the search conducted in technical fields to which the subject matter of the application pertains.</u></p> <p><u>The technical fields to which the invention pertains are the major technical fields of the subject matter of the application. There is the greatest possibility to find the closely relevant reference documents if the search is conducted in these fields. Therefore, the examiner shall begin the search in the patent literatures in</u></p>	

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<p>术领域不正确，审查员应当重新确定技术领域，并在该技术领域中进行检索。</p>	<p><u>these fields.</u></p> <p><u>As to other subject matters of the application to which the search shall be directed, search shall be carried out in a similar way in the technical fields to which it pertains and in the relevant technical fields.</u></p> <p><u>If it is found that the technical fields have not been correctly determined after the search described in this section, the examiner shall re-determine the technical fields and carry out search in those fields.</u></p>	
<p>6.2.3 扩展检索</p> <p>扩展检索是在功能类似或应用类似的技术领域进行的检索。</p> <p>例如，一件申请的独立权利要求限定了一种使用硅基液压油的液压印刷机。发明使用硅基液压油，以解决运动部件的腐蚀问题。如果在液压印刷机所属的技术领域中检索不到对比文件，应当到功能类似的技术领域，如存在运动部件腐蚀问题的一般液压系统所属的领域，或者到应用类似的技术领域，如液压系统的特定应用技术领域，进行扩展检索。</p>	<p><u>6.2.3 Extended search</u></p> <p><u>The extended search is the search conducted in analogous technical fields in terms of function or application.</u></p> <p><u>For example, an independent claim of an application defines a hydraulic printing machine which uses silica-based hydraulic oil. The invention utilizes silica-based hydraulic oil to solve the problem of corrosion of the moving parts. If no reference document can be found in the technical field to which the hydraulic printing machine pertains, the extended search shall be conducted in the analogous technical fields in</u></p>	

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	<p><u>terms of function, such as the technical field to which the general hydraulic system having the problem of corrosion of the moving parts pertains, or the analogous technical fields in terms of application, such as the technical field of specific application of hydraulic systems.</u></p>	
<p>6.3 检索策略</p> <p>制定检索策略通常包括选择检索系统或数据库、表达基本检索要素、构建检索式和调整检索策略。</p> <p>在检索过程中，审查员可以随时根据相关文献进行针对引用文献、被引用文献、发明人、申请人的追踪检索，以便找到进一步的文献。</p>	<p>6.3 Strategy of Search</p> <p><u>The formulation of strategy of search generally includes selection of the search system or database, expression of basic search elements, establishment of search string and adjustment of the strategy of search.</u></p> <p><u>In the process of search, the examiner may at any time depend on a relevant document to trace the citing documents, cited documents, inventors, or applicants in order to find further relevant documents.</u></p>	
<p>6.3.1 选择检索系统或数据库</p> <p>在选择检索系统/数据库时，审查员一般需要考虑如下因素：</p> <p>(1) 申请的主题的所属技术领域；</p> <p>(2) 预期要检索文件的国别和年代；</p> <p>(3) 检索时拟采用的检索字段和检索系</p>	<p>6.3.1 Selection of Search System or Database</p> <p><u>The examiner generally shall take the following factors into account when selecting the search system/database:</u></p> <p><u>(1) the technical fields to which the subject matter of the application pertains;</u></p>	

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<p><u>统/数据库能够提供的功能：</u> <u>(4) 申请人、发明人的特点。</u></p>	<p><u>(2) the nationality and year of the documents expected to be searched;</u> <u>(3) the search fields planned which approach to use at the time of the in search and functions that can be provided by the search system/database;</u> <u>(4) characteristics of the applicant, the inventor.</u></p>	
<p>6.3.2 表达基本检索要素 基本检索要素的表达形式主要包括：分类号、关键词等。一般地，对于体现申请的主题的基本检索要素应当优先用分类号进行表达。 在用分类号表达时，通常需要根据申请的主题的特点和分类体系的特点，选择使用合适的分类体系。当选择了某一分类体系后，首先使用最准确、最下位的分类号进行检索，但如果同时存在多个非常相关的分类号，也可以一并进行检索。 在用关键词表达时，通常首先使用最基本、最准确的关键词，再逐步从形式上、意义上、角度上三个层次完善关键词的表达。形式上应充分考虑关键词表达的各种形式，如英文的不同词性、单复数词形、常见错误拼写形</p>	<p><u>6.3.2 Expression of Basic Search Elements</u> <u>The form of expression of basic search elements mainly includes: classification symbols, keywords, etc. In general, for basic search elements showing the subject matter of the application, expression with the classification symbols shall take the priority.</u> <u>In expression with classification symbols, the examiner shall choose an appropriate classification system to use generally according to the characteristics of the subject matter of the application and the characteristics of the classification system. Upon choosing a certain classification system, the examiner shall carry on search by first using the most accurate and the most specific classification symbols. However, if</u></p>	

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<p>式等；意义上应充分考虑关键词的各种同义词、近义词、反义词、上下位概念等；角度上应充分考虑说明书中记载的所要解决的技术问题、技术效果等。</p>	<p><u>there are a plurality of much relevant classification symbols at the same time, the examiner may conduct search on these together.</u></p> <p><u>In expression with keywords, the examiner shall begin with the most basic and the most accurate keywords, and then improve the expression of the keywords in three levels of form, meaning and perspective. In terms of form, various forms of expression of keywords should be fully taken into account, such as different parts of speech of English words, singular and plural morphology, common spelling mistakes etc.; in terms of meaning, synonymy, near synonymy, antonym, specific and generic concept of keywords should be fully taken into account; and in terms of perspective, the technical problem to be solved and the technical effect disclosed in the description should be fully taken into account.</u></p>	
<p>6.3.3 构建检索式</p> <p>审查员可以将同一个基本检索要素的不同表达方式构造成块，结合申请的主题的特点和检索情况，运用逻辑运算符对块进行组合构建检索式。块的组合方式包括全要素组</p>	<p>6.3.3 <u>Establishment of Search String</u></p> <p><u>The examiner may construct different ways of expression of the same basic search element into blocks, combine blocks by using logic operators to construct a search strings in connection with</u></p>	

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合检索、部分要素组合检索和单要素检索。	<u>the characteristics of the subject matter of the application and the status of search. The combination manner of blocks includes search on combination of full elements, search on combination of partial elements, and search on single element.</u>	
<p>6.3.4 调整检索策略</p> <p>审查员一般需要根据检索结果以及对新颖性和创造性评价的预期方向调整检索策略。</p> <p>(1) 调整基本检索要素的选择</p> <p>审查员需要根据掌握的现有技术和对发明的进一步理解, 改变、增加或减少基本检索要素。</p> <p>(2) 调整检索系统/数据库</p> <p>当审查员在某一检索系统/数据库中没 有获得对比文件时, 需要根据可以使用的检索字段和功能, 以及预期对比文件的特点重新选择检索系统/数据库。</p> <p>(3) 调整基本检索要素的表达</p> <p>审查员需要根据检索结果随时调整基本检索要素的表达, 例如, 调整分类号的表达时, 通常首先使用最准确的下位组, 再逐步调整到上位组, 直至大组, 甚至小类, 也可以根</p>	<p>6.3.4 Adjustment of Strategy of Search</p> <p><u>The examiner generally shall adjust strategy of search according to the search results and anticipated direction of assessment of novelty and inventive step.</u></p> <p><u>(1) Adjustment of the selection of basic search elements</u></p> <p><u>The examiner shall change, add or reduce the basic according to the prior art in hand and further und invention.</u></p> <p><u>(2) Adjustment of search system/database</u></p> <p><u>If the examiner fails to obtain a reference document in a certain search system/database, the examiner shall reselect a search system/database according to the available search fields and function as well as the characteristic of anticipated reference documents.</u></p>	

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<p>据检索结果，或者利用分类表内部或之间的关联性发现新的适合的分类型号；调整关键词的表达时，通常首先使用最基本、最准确的关键词，再逐步在形式、意义和角度三个层次调整表达。</p>	<p><u>(3) Adjustment of expression of basic search elements</u></p> <p><u>The examiner needs to adjust the expression of basic search elements all the time according to the search results. For example, in adjustment of expression of classification symbols, the examiner generally may first use the most accurate specific group, and then the generic group, the main group, and even the subclasses in succession; the examiner may also find out new appropriate classification symbols according to the search results or by using the relevancy in or between the classification tables; in adjustment of expression with keywords, the examiner generally shall begin with the most basic and the most accurate keywords, and then adjust the expression in three levels of form, meaning and perspective.</u></p>	
<p>6.2 检索的顺序 6.2.1 在所属技术领域检索 所属技术领域是申请的主题所在的主要技术领域，在这些领域中检索，找到密切相关的对比文件的可能性最大。因此，审查员首先应当在这些领域的检索用专利文献</p>	<p>6.2 Sequence of Search</p> <p>6.2.1 Search in Technical Fields to Which the Invention Pertains</p> <p>The technical fields to which the invention pertains are the major technical fields of the subject matter of the application. There is the</p>	

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<p>中进行全面检索。例如，表示发明信息的分类号为xxx7/16.....(7/12 优先)，那么首先检索 7/16，然后检索 7/12；之后，还应当检索 7/16 及 7/12 之下属于不明显排除申请的主题的各个小组；最后检索覆盖申请的主题的高一级小组直到大组。如果表示发明信息的分类号不止一个，那么还应当以同样的方法，在其他分类号的技术领域的检索用专利文献中进行检索。</p> <p>对申请的其他应检索的主题，应当在其所属和相关的技术领域采用类似的方法进行检索。</p>	<p>greatest possibility to find the closely relevant documents if the search is conducted in these fields. Therefore, the examiner shall begin the comprehensive search in the patent documents in these fields. For example, if the IPC symbol indicating the invention information is "xxxx7/16 (7/12 having priority)", then the search shall be directed to 7/16 first and then to 7/12; after that, the examiner shall search the various subgroups under 7/16 and 7/12, in which the subject matter of the application are not obviously excluded. Finally, the examiner shall search the subgroup at the immediate higher level up to the main group which covers the subject matter of the application. If there are more than one IPC symbols indicating the invention information, in the same way, the examiner shall search the patent documents in the technical fields defined by other IPC symbols.</p> <p>As to other subject matters of the application to which the search shall be directed, the search shall be carried out in a similar way in the technical fields to which it pertains and in the relevant technical fields.</p>	
6.2.2 在功能类似的技术领域中检索	6.2.2 Search in Technical Fields of Similar	

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<p>审查员应当根据本章第 6.2.1 节所述的检索的结果,考虑是否需要把检索扩展到功能类似的技术领域。如有必要,应当在功能类似的技术领域中按照本章第 6.2.1 节所述的方法进行检索。</p>	<p>Function</p> <p>Based on the search results obtained by carrying out the search according to what is described in Section 6. 2. 1 of this Chapter, the examiner shall consider whether it is necessary to extend the search to the analogous technical fields. If it is, the search shall be carried out in these technical fields which have analogous function in the way as described in Section 6. 2. 1 of this Chapter.</p>	
<p>6.2.3 重新确定技术领域后再进行检索</p> <p>如果通过本章第 6.2.1 及 6.2.2 节中的检索,没有找到对比文件,有可能是原来确定的技术领域不正确。这时,审查员应当重新确定技术领域,在该技术领域中进行检索。</p> <p>在本章第 6.2.1、6.2.2 及 6.2.3 节的检索中,检索的时间顺序,即所查阅的检索资料的公开时间的顺序,一般都是相对于申请日而言由近至远。</p>	<p>6.2.3 Search after Redetermination of Technical Fields</p> <p>If no reference documents are found after the search described in Sections 6. 2. 1 and 6. 2. 2 of this Chapter, it is possible that the technical fields have not been correctly determined. Then, the examiner has to redetermine the technical fields and carry out the search in those fields.</p> <p>In carrying out the search as described in Sections 6. 2. 1, 6. 2. 2 and 6. 2. 3 of this Chapter, the chronological order of the search, i.e., the sequence of the disclosure date of the search materials to be consulted, shall be, in general, from latest to previous as compared with the</p>	

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<p>6.2.4 检索其他资料</p> <p>根据需要, 审查员还应当在检索用非专利文献(参见本章第 2.2 节)中进行检索。</p> <p>此外, 审查员还可以查阅在上述第 6.2.1 至 6.2.3 节检索得到的对比文件中所引证的文件, 以及查阅检索出的专利申请公开说明书或专利说明书中“引证参考资料”栏下列举的相关文件。</p>	<p>filing date of the application.</p> <p>6.2.4 Search in Other Materials</p> <p>Where necessary, the examiner shall carry out search in the nonpatent literature for search (see Section 2.2 of this Chapter).</p> <p>Besides, the examiner may consult the documents cited in the reference documents obtained in the above-mentioned Sections 6.2.1-6.2.3, and the relevant documents listed as "reference cited" of the publication of invention applications or publication of invention patents obtained from the search.</p>	
<p>6.3 具体的步骤</p> <p>6.3.1 机检方式</p> <p>在进行计算机检索时, 为尽可能全面地检索, 对于每个检索要素, 审查员应当尽可能地从多个角度进行表达, 如用关键词、分类号、化学结构式等。例如, 对于一个包含两个基本检索要素 A 和 B 的权利要求, 基本的检索思路可以表示为:</p> <p>将涉及检索要素 A 的分类号和关键词的两种检索结果以逻辑或的关系合并, 作为针对检索要素 A 的检索结果; 将涉及检索要</p>	<p>6.3 Detailed Steps</p> <p>6.3.1 Manner of Computer Search</p> <p>When conducting a computer search, in order to make a complete search, the examiner shall express each search element by various means, such as by keywords, classification symbols and chemical structural formulas. For example, for a claim including two basic search elements A and B, the basic search strategy may be as follows:—</p> <p>making an "OR" combination of the search result from classification symbols with that from</p>	

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<p>素B的分类号和关键词的两种检索结果以逻辑或的关系合并,作为针对检索要素B的检索结果;然后将上述针对检索要素A、B的检索结果以逻辑与的关系合并,作为针对该权利要求的检索结果。</p> <p>在实际检索过程中,审查员可以根据申请的具体情况采用不同组合方式进行检索,例如:—</p> <p>(1)将涉及要素A的分类号和涉及要素B的关键词的两种检索结果以逻辑与的关系合并;—</p> <p>(2)将涉及要素A的分类号和涉及要素B的分类号的两种检索结果以逻辑与的关系合并;—</p> <p>(3)将涉及要素A的关键词和涉及要素B的关键词的两种检索结果以逻辑与的关系合并;—</p> <p>(4)将涉及要素A的关键词和涉及要素B的分类号的两种检索结果以逻辑与的关系合并;—</p> <p>(5)将涉及要素A的分类号和涉及要素A的关键词的两种检索结果以逻辑或的关系合并,其结果再与涉及要素B的关键词或分类号的结果以逻辑与的关系合并。—</p>	<p>keywords of search element A as the search result for search element A; making an "OR" combination of the search result from classification symbols with that from keywords of search element B as the search result for search element B; and then making an "AND" combination of the above search result for search element A with that for B as the search result for the claim.</p> <p>In practical search, the examiner may conduct the search by means of different combinations according to the specific circumstance of the application. For example, the examiner may:</p> <p>(1) make an "AND" combination of the search result from classification symbols of element A with the search result from keywords of element B;</p> <p>(2) make an "AND" combination of the search result from classification symbols of element A with the search result from classification symbols of element B;</p> <p>(3) make an "AND" combination of the search result from keywords of element A with the search result from keywords of element B;</p>	

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<p>当采用一种方式检索没有找到较相关的对比文件时,应当考虑所采用的这种方式可能遗漏的文献。比如在方式(1)中,可能遗漏的文献有:含有至少与A、B之一相关的关键词,但未分在A的分类号下的文献;分类号至少与A、B的分类号之一相同,但不含有与B相关的关键词的文献。对于可能遗漏的文献,应当调整检索方式进行针对性的检索。如果针对检索要素A、B的结合没有检索到能够评价该技术方案的新颖性或创造性的单份文件时,一般还应当考虑分别针对单独检索要素A或B进行检索的结果。如果技术方案包含有多个基本检索要素,例如基本检索要素A、B和C,在找不到能够评价该技术方案的新颖性或创造性的单份文献时,一般应该考虑基本检索要素的组合,例如考虑A+B、A+C和B+C的组合;必要时,还需要考虑单独检索要素A、B、C。</p> <p>此外,在计算机检索过程中,审查员还可以随时根据相关文献进行针对引用文献、被引用文献、发明人、申请人的跟踪检索,以便找到进一步相关的文献。</p>	<p>(4) make an "AND" combination of the search result from keywords of element A with the search result from classification symbols of element B; or</p> <p>(5) make an "OR" combination of the search result from classification symbols with that from keywords of element A, and then make an "AND" combination of the above result with the search result from keywords or classification symbols of the element B.</p> <p>If no relevant reference document is found by one means of search, the examiner shall consider whether there may be any document possibly missed by this means. For example, in the above search means(1), possibly missed documents include: those documents having the keywords relevant with at least one of A and B but not assigned any of the classification symbols of A; and those documents assigned a classification symbol that is the same as at least one of the classification symbols of A and B, but not having any of the keywords relevant with B. For those possibly missed documents, the examiner shall adjust the means of search to</p>	

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	<p>conduct a targeted search. Where no reference document capable of affecting the novelty or inventive step of the technical solution is found by search directed to the combination of search elements A and B, in general, the examiner shall consider the results from conducting search respectively directed to the individual search elements A or B. If the technical solution involves a plurality of basic search elements, e.g., basic search elements A, B and C, here no reference document capable of affecting the novelty or inventive step of the technical solution is found, in general, the examiner shall consider conducting search directed to the combinations of the basic search elements, e.g., the combinations of A + B, A + C and B + C; if necessary, the individual search elements A, B or C shall also be considered.</p> <p>Furthermore, in the process of computer search, the examiner may also at any time use a relevant document to trace the citing documents, cited documents, inventors, or applicants in order to find further relevant documents.</p>	

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<p>6.3.2 手检方式</p> <p>在用手检方式进行检索时, 审查员可以按照下述步骤查阅专利文献:—</p> <p>第一步, 迅速浏览要检索的技术领域的审查用检索文档中专利文献扉页上的摘要和附图以及权利要求书中独立权利要求的内容; 日本、俄罗斯(包括原苏联)、德国(包括原联邦德国)、英国、法国和瑞士等国的专利分类文摘; 中外期刊论文分类题录等, 将那些初步判断可能与申请的主题有关的文件提出来。如果检索针对的申请有显示各种具体结构的附图, 审查员可以把申请的附图与审查用检索文档中文件的附图一一对照, 将那些附图所显示的结构特征与申请中的结构相同或者类似的文件提出来。—</p> <p>第二步, 仔细阅读第一步中提出的那些文件的摘要、附图和权利要求, 以及有关文摘和题录所对应的文件, 选出与申请较相关的对比文件。—</p> <p>第三步, 仔细阅读和分析研究第二步中选出的文件的说明书部分, 最后确定在检索报告和审查意见通知书正文中将引用的对比文件。—</p>	<p>6.3.2 Manner of Manual Search</p> <p>In the process of manual search, the examiner may consult the patent documents in the following steps.</p> <p>Step 1: in the search files of the technical fields to be searched, quickly skim through the abstract and figure on the first page of the patent documents and the contents of the independent claims in the claims, the patent abstracts of Japan, Russia (including the former USSR), Germany (including the former Federal Republic of Germany), UK, France, Switzerland, etc., bibliographic data of the Chinese and foreign periodicals and thesis, and pick out those documents which are considered to be relevant to the subject matter of the application after a preliminary judgment. If the application to be searched has drawings showing various detailed structures, the examiner may compare the drawings of the application with those of the documents in the search files one by one, and pick out those documents with the same or similar structures as those in the application.</p> <p>Step 2: carefully read the abstracts, drawings,</p>	

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	<p style="color: red;">and claims of the patent documents selected in Step 1, and the documents corresponding to the abstracts and bibliographic data selected in Step 1, and pick out those documents which are rather relevant to the application.</p> <p style="color: red;">Step 3: carefully read, analyze and study the descriptions of the documents selected in Step 2, and finally determine the reference documents to be used in the search report and in the Office Action.</p>	
<p>8. 中止检索</p> <p>8.1 检索的限度</p> <p>.....考虑的原则是用于检索的时间、精力和成本与预期可能获得的结果要相称。</p> <p><u>在这一原则下，审查员在没有获得对比文件而决定中止检索时，应当至少在最低限度数据库内进行了检索。最低限度数据库一般情况下应当包括 CNABS、VEN、CNTXT、英文全文数据库以及中国期刊全文数据库。对于一些特定领域的申请，还应当包括该领域专用数据库（例如，化学结构数据库）。必要时可根据领域特点，调整英文全文数据库的范围，或增加其他非专利文献数据库。</u></p>	<p>8. Termination of Search</p> <p>8.1 Limit of Search</p> <p>.....The factors to be considered are the balance of time, energy and cost spent on the search and the expected results.</p> <p style="color: red;"><u>Under this principle, where the examiner decides to terminate the search due to failure to find reference documents, the search shall have been at least conducted in the lowest limit database. In general, the lowest limit database shall include CNABS, VEN, CNTXT, English Full-text Database and Chinese Journal Full-text Database. For some applications in the specific field, specific database of the field (for example, Chemical</u></p>	

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	<u>Structures Database) should also be included. If necessary, the range of English Full-text Database can be adjusted or other non-patent literature database can be added according to the characteristics of fields.</u>	
<p>第二部分第七章</p> <p>10. 不必检索的情况</p> <p>.....</p> <p>(4)说明书和权利要求书未对该申请的主题作出清楚、完整的说明,以致于所属技术领域的技术人员不能实现。</p> <p><u>需要注意的是,对于申请的全部主题是否属于上述情形,必要时审查员仍需通过恰当方式了解相关背景技术,以站位于本领域的技术人员做出判断。</u></p>	<p>Part II Chapter 7</p> <p>10. Circumstances in Which Search is Not Required</p> <p>.....</p> <p>(4) the description and claims fail to set forth clearly and completely the subject matters of the application so that a person skilled in the art cannot carry it out.</p> <p><u>It should be noted that the examiner should judge whether all subject matters of the application fall into the above circumstance by understanding related background art in appropriate way as those skilled in the art, where necessary.</u></p>	
<p>12. 检索报告</p> <p>检索报告用于记载检索的结果,特别是记载构成相关现有技术的文件,<u>以及与检索过程有关的检索记录信息</u>。检索报告采用专</p>	<p>12. Search Report</p> <p>The search report is used to record the results of the search, especially the documents which constitute the relevant prior art, <u>and search</u></p>	

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<p>利局规定的表格。审查员应当在检索报告中清楚地记载检索到最接近的现有技术的主要检索式，包括检索的数据库以及在该数据库中执行的检索表达式（包括基本检索要素表达形式和逻辑运算符）检索的领域、数据库以及所用的基本检索要素及其表达形式（如关键词等），准确列出由检索获得的对比文件以及对比文件与申请主题的相关程度，并且应当按照检索报告表格的要求完整地填写其他各项。</p>	<p><u>record information in relation to the search procedure</u>. The search report shall use the form prescribed by the Patent Office, and it shall clearly record <u>the main search string of the searched closest prior art, including database of the search and the search expressions enforced in the database (containing basic search element expressions and logical operators)</u> the technical fields and databases to be searched, the basic search elements used and their expressions (e.g., keywords, etc.), and <u>accurately list</u> the reference documents obtained by the search with symbols showing the level of relevance of the reference documents with the subject matter of the application. The examiner shall fill in all other items as required in the form of search report.</p>	
<p>第二部分第八章 4.11.1 对申请继续审查后的处理 审查员继续审查申请后，视不同情况，可对申请作如下不同的处理。 (1) 申请人根据审查员的意见，对申请作了修改，消除了可能导致被驳回的缺陷，使修改后的申请有可能被授予专利权的，如果申请仍存在某些缺陷，则审查员应当再次通</p>	<p>Part II Chapter 8 4.11.1 Handling of Application after Continuation of Examination After the continuation of the examination, the examiner may handle the application in the following ways according to the circumstances: (1) where the applicant has made amendments according to the observations of</p>	<p>AIPLA welcomes the proposals regarding interview, allowing better communications between the applicant and the examiner, with respect to formal matters and with respect to substantive matters.</p>

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<p>知申请人消除这些缺陷,必要时,还可以通过 与申请人会晤、电话讨论及其他方式(参见 本章第 4.12 和第 4.13 节)来加速审查;对个 别的问题,如有可能,审查员可以用本章第 4.13 节所述的方式通过电话与申请人讨论。 但是,除审查员对明显错误进行依职权修改 (参见本章第 5.2.4.2 和第 6.2.2 节)的情况 外,不论采用什么方式提出修改意见,都必须 以申请人正式提交的书面修改文件为依据。</p>	<p>the examiner, eliminated the defect which may lead to rejection of the application so that the patent right may be granted to the revised application, if there are still some defects in the application, the examiner shall invite the applicant again to eliminate these defects. Where necessary, the examiner may accelerate the examination by an interview with the applicant, <u>communication by telephone and other means</u> (see Section 4.12 <u>and 4.13</u> of this Chapter). If possible, the examiner may have discussion with the applicant by telephone in the way as described in Section 4.13 of this Chapter. However, no matter in what form the amendment is proposed, the basis for the examination shall be the written amendments formally submitted by the applicant except that the examiner makes amendments to the obvious mistakes ex officio (see Sections 5.2. 4.2 and 6.2.2 of this Chapter).</p>	
<p>4.12 会晤 在实质审查过程中在某些情况下,例如 本章第 4.11.1 节(1) 中所述的情况,审查员可 以约请申请人会晤,以加快审查程序。申请人</p>	<p>4.12 Interview <u>During substantive examination</u>Under some circumstances, such as the circumstances described in Section 4.11.1 (1) of this Chapter,</p>	<p>AIPLA welcomes CNIPA’s proposal to make interviews with examiners more widely available, believing such interviews to be conducive to efficient and high-quality</p>

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<p>亦可以要求会晤, 此时, 审查员只要认为通过会晤能达到有益的目的, <u>有利于澄清问题、消除分歧、促进理解</u>, 审查员就应当同意申请人提出的会晤要求。某些情况下反之, 审查员可以拒绝会晤要求, 例如, 通过书面方式、电话讨论等, 双方意见已经表达充分、相关事实认定清楚的。</p>	<p>the examiner may invite the applicant to have an interview so as to accelerate the examination procedure. The applicant may also request for an interview. In this situation, if only the examiner believes that a useful purpose will be served by such an interview <u>and it is useful to clarify the problem, resolve disagreements and facilitate understanding</u>, the request shall be granted <u>by the examiner.</u>; <u>In some situation otherwise</u>, the request may be refused, <u>for example, both parties have fully expressed opinions and relevant fact is identified clearly in a written form or by communication by telephone etc.</u></p>	<p>examination.</p>
<p>4.12.1 举行会晤的启动条件 举行会晤的条件是:— —(1) 审查员已发出第一次审查意见通知书, 并且— —(2) 申请人在答复审查意见通知书的同时或者之后提出了会晤要求, 或者审查员根据案情的需要向申请人发出了约请。 不管是审查员约请的, 还是申请人要求的会晤, 都应当预先约定。可采用会晤通知书或通过电话来约定, 会晤通知书的副本和约</p>	<p>4.12.1 Conditions of Holding Interview The conditions for holding an interview are as follows: (1) the examiner has issued the first Office Action; and (2) at the time of or after submitting the response to the Office Action, the applicant files a request for interview; or when the examiner thinks it necessary to invite the applicant to have an interview. No matter invited by the examiner or</p>	<p>AIPLA commends the proposal to expand the time during which an interview may be requested or held, so that an interview can be held at any time during examination.</p>

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<p>定会晤的电话记录应当存放在申请案卷中。在会晤通知书或约定会晤的电话记录中，应当写明经审查员确认的会晤内容、时间和地点。如果审查员或者申请人准备在会晤中提出新的文件，应当事先提交给对方。</p> <p style="text-align: center;">.....</p>	<p>requested by the applicant, the interview shall be arranged in advance by issuing Notification o/Interview or by telephone. The duplicate copy of the Notification of Interview or the Minutes of Telephone Communication Concerning Appointment of Interview shall be included in the application file. It shall be indicated clearly in said notification or the minutes the contents, time and place of the interview confirmed by the examiner. If a new document is to be put forward in the interview by the examiner or by the applicant, it shall be submitted to the other party before the interview.</p> <p style="text-align: center;">.....</p>	
<p>4.13 电话讨论及其他方式</p> <p>在实质审查过程中，审查员可以与申请人可以就发明和现有技术的理解、申请文件中存在的问题等进行电话讨论，但电话讨论仅适用于解决次要的且不会引起误解的形式方面的缺陷所涉及的问题。也可以通过视频会议、电子邮件等其他方式与申请人进行讨论。必要时，审查员应当记录电话讨论的内容，并将其存入申请案卷。</p> <p>对于电话讨论中审查员同意的修改内</p>	<p>4.13 Communication by Telephone <u>and other means</u></p> <p><u>During substantive examination, t</u>he examiner <u>and the applicant</u> may discuss <u>the understanding of the invention and prior art</u>, the problems <u>existing</u> in the application documents <u>etc. with the applicant</u> by telephone <u>and the examiner may also discuss with the applicant through video conference, email and other means</u>.</p>	<p>AIPLA commends the proposal allowing a wide range of communication options during examination.</p>

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<p>容，属于本章第 5.2.4.2 节和第 6.2.2 节所述的情况的，审查员可以对这些明显错误依职权进行修改。除审查员可依职权修改的内容以外，对审查员同意的修改内容均需要通常申请人应当正式提交经过该修改的书面文件，审查员应当根据该书面修改文件作出审查结论。</p> <p>如果审查员在电话讨论中同意的修改内容属于本章第 5.2.4.2 节和第 6.2.2 节所述的情况，则审查员可以对这些明显错误依职权进行修改。</p>	<p>However, the communication by telephone shall apply only to minor issues and non-misleading issues concerning the formal defects. <u>Where necessary,</u> the examiner shall record the matters discussed by telephone and keep it in the application file.</p> <p>For the amendments agreed by the examiner in the telephone conversation, <u>which fall into the scope as described in Sections 5.2.4.2 and 6.2.2 of this Chapter, the examiner may correct the obvious mistakes ex officio.</u> In addition to the amendments which can be made by the examiner ex officio, for the amendments agreed by the examiner, the applicant shall usually <u>is required to</u> submit the formal revised documents in written form. The examiner shall make conclusion according to such written documents.</p> <p>Where the contents of the amendments agreed by the examiner in the telephone conversation fall into the scope as described in Sections 5.2.4.2 and 6.2.2 of this Chapter, the examiner may correct the obvious mistakes ex officio.</p>	
第二部分第一章	Part II Chapter 1	

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<p>3.1.2 违反社会公德的发明创造</p> <p>.....</p> <p>发明创造与社会公德相违背的，不能被授予专利权。.....人胚胎的工业或商业目的的应用，.....上述发明创造违反社会公德，不能被授予专利权。</p> <p><u>但是，如果发明创造是利用未经过体内发育的受精14天以内的人胚胎分离或者获取干细胞的，则不能以“违反社会公德”为理由拒绝授予专利权。</u></p>	<p>3. 1. 2 Inventions-Creations Contrary to Social Morality</p> <p>.....</p> <p>Where an invention-creation is contrary to social morality, it shall not be granted a patent right. use of human embryos for industrial or commercial purposes,inventions-creations are contrary to social morality and thus shall not be granted patent rights.</p> <p><u>However, if the invention-creation utilizes human embryos, within 14 days of fertilization without development in vivo, to separate or obtain stem cells, it shall not be rejected from grant of patent right for the reason of being “contrary to social morality”.</u></p>	
<p>第二部分第十章</p> <p>9.1.1.1 人类胚胎干细胞</p> <p>人类胚胎干细胞及其制备方法，均属于专利法第五条第一款规定的不能被授予专利权的发明。</p>	<p>Part II Chapter 10</p> <p>9.1.1.1 Embryonic Stem Cell of Human Beings</p> <p>Both an embryonic stem cell of human beings and a preparing method thereof shall not be granted the patent right in accordance with the provisions of Article 5.1.</p>	
<p>9.1.1.12 处于各形成和发育阶段的人体</p> <p>处于各个形成和发育阶段的人体，包括</p>	<p>9.1.1.21 Human Body at the Various Stages of Its Formation and Development</p>	

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<p>人的生殖细胞、受精卵、胚胎及个体，均属于专利法第五条第一款规定的不能被授予专利权的发明。<u>人类胚胎干细胞不属于处于各个形成和发育阶段的人体。</u></p> <p>9.1.1.23 违法获取或利用遗传资源完成的发明创造</p>	<p>The human body, at the various stages of its formation and development, including a germ cell, an oosperm, an embryo and an entire human body shall not be granted the patent right in accordance with the provisions of Article 5. 1. <u>The embryonic stem cell of human beings do not belong to human body at the various stages of formation and development.</u></p> <p>2 Inventions-Creations Mentioned in Article 5.2</p>	
<p>第四部分第三章</p> <p>3.3 无效宣告请求范围以及理由和证据</p> <p>.....</p> <p>(5) 请求人应当具体说明无效宣告理由，提交有证据的，应当结合提交的所有证据具体说明。对于发明或者实用新型专利需要进行技术方案对比的，应当具体描述涉案专利和对比文件中相关的技术方案，并进行比较分析；对于外观设计专利需要进行对比的，应当具体描述涉案专利和对比文件中相关的图片或者照片表示的产品外观设计，并进行比较分析。例如，请求人针对专利法第二十二条第三款的无效宣告理由提交多篇对比文件的，应当指明与请求宣告无效的专利最接近的对比文件以及单独对比还是结合对比的对</p>	<p>Part IV Chapter 3</p> <p>3.3 Scope, Causes and Evidence of a Request for Invalidation</p> <p>.....</p> <p>(5) The petitioner shall explain the causes for invalidation concretely, making reference to all the evidence if applicable. For an invention or utility model patent, if a comparison of technical solutions is required, a specific description shall be given to the relevant technical solutions in the patent concerned and the reference documents, comparative analysis shall be made in that regard. For a design patent, if a comparison is required, a specific description shall be given to the product designs as shown in</p>	

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<p>比方式，具体描述涉案专利和对比文件的技术方案，并进行比较分析。如果是结合对比，存在两种或者两种以上结合方式的，应当<u>首先将指明最主要的</u>具体结合方式进行比较分析。未明确最主要结合方式的，则默认第一组对比文件的结合方式为最主要结合方式。对于不同的独立权利要求，可以分别指明最接近的对比文件。</p> <p>.....</p>	<p>the drawings or photographs of the patent concerned and the reference documents, comparative analysis shall be made in that regard. For example, where the request for invalidation is based on Article 22.3 and more than one reference document is submitted, the petitioner shall indicate which one is the closest to the patent to be requested for invalidation, state whether the reference documents are used separately or in combination, give a specific description to the technical solutions in the patent concerned and the reference documents, and make comparative analysis. If they are used in combination and there exist two or more possibilities of combination, the specific-most important manner of combination shall be indicated-compared and analyzed at first. If the most important manner of combination is not clear, the manner of combination of the first group of reference documents is tacitly approved as the most important manner of combination. For different independent claims, the respective closest reference document may be indicated separately.</p>	

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<p>第二部分第八章 实质审查程序</p> <p>3. 审查文件的核查与实质准备</p> <p>3.4 审查的顺序</p> <p>3.4.1 一般原则</p> <p>对于接收的发明专利申请，除本章第3.4.2节所述的特殊情况外，都应当按照接收的先后顺序进行审查，但可以将先后接收的同类的专利申请放在一起同时审查。</p> <p>在申请人对第一次审查意见通知书作出答复之后，审查员对申请继续审查时，一般应按照答复的先后顺序进行。</p>	<p style="text-align: center;">.....</p> <p>Part II Chapter 8 Procedure for Substantive Examination</p> <p>3. Verification of Application Documents and Preparation of Substantive Examination</p> <p>3.4 Order of Examination 3.4.1 General Principles</p> <p>Except for the special circumstances described in Section 3.4.2 of this Chapter, the examination shall be performed according to the order of receipt for all the invention applications that are received. However, the applications belonging to the same category received successively may be handled together.</p> <p>After the applicant responses to the first Office Action, the examiner shall continue the examination in the order of the time of receiving the responses.</p>	
<p>3.4.2 特殊处理</p> <p>对下列几种情况可作特殊处理：—</p> <p>—(1) 对国家利益或者公共利益具有重大意义的申请，由申请人或者其主管部门提出申请，经专利局局长批准后，可以优先审查。</p>	<p>3.4.2 Special Treatment</p> <p>There may be special treatment in the following circumstances: (1) for applications having great significance to the interest of the State or to the public interest, upon the request</p>	

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<p>并在随后的审查过程中予以优先处理。—</p> <p>—(2) 对于专利局自行启动实质审查的专利申请，可以优先处理。—</p> <p>—(3) 保留原申请目的分案申请，可以与原申请一起审查。—</p>	<p>of the applicant or the competent authorities concerned and with the approval of the Commissioner of the Patent Office, examination may be conducted first and handled with priority in the later examination proceedings; (2) for applications of which the substantive examination is started on the initiative of the Patent Office, examination may be conducted with priority; and</p> <p>(3) for divisional applications of which the original dates of filing are retained, examination may be conducted together with that of the original application.</p>	
<p>第五部分第七章 期限、权利的恢复、中止、审查的顺序</p> <p>8. 审查的顺序</p> <p>8.1 一般原则</p> <p>对于发明、实用新型和外观设计专利申请，一般应当按照申请提交的先后顺序启动初步审查；对于发明专利申请，一般应当按照提出实质审查请求的先后顺序启动实质审查；另有规定的除外。</p>	<p>Part V Chapter 7 Time Limit, Restoration of Right and, Suspension of Procedure, <u>and Order of Examination</u></p> <p><u>8. Order of Examination</u> <u>8.1 General principles</u></p> <p><u>In general, for the patent application of invention, utility model and design, preliminary examination shall be started according to the order of filing of the application; for the invention patent application, in general, substantive examination shall be started according to the order of filing of request for the</u></p>	

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	<u>substantive examination; unless otherwise provided,</u>	
<p>8.2 优先审查</p> <p><u>对国家利益或者公共利益具有重大意义的申请，由申请人或者其主管部门提出请求，经批准后，可以优先审查，并在随后的审查过程中予以优先处理。</u></p> <p><u>但是，同一申请人同日（仅指申请日）对同样的发明创造既申请实用新型又申请发明的，对于其中的发明专利申请一般不予优先审查。</u></p>	<p>8.2 Examination with Priority</p> <p><u>For applications having great significance to the interest of the State or to the public interest, upon request of the applicant or the competent authorities concerned and with the approval, examination may be conducted with priority and handled with priority in the later examination proceedings.</u></p> <p><u>However, where an applicant files on the same day (meaning the date of filing) applications for both patent for utility model and patent for invention relating to the identical invention-creation, the examination for the invention patent application shall not be conducted with priority.</u></p>	<p>AIPLA welcomes CNIPA’s proposal to provide a mechanism to prioritize examination of applications, including by request of the applicant. This amendment brings Chinese practice more closely into alignment with international standards of examination.</p>
<p>8.3 延迟审查</p> <p><u>申请人可以提出延迟审查请求。发明专利延迟审查请求，应当由申请人在提出实质审查请求的同时提出，但发明专利申请延迟审查请求自实质审查请求生效之日起生效；实用新型和外观设计延迟审查请求，应当由</u></p>	<p>8.3 Examination with Delay</p> <p><u>The applicant may submit the request for the examination with delay. The request for the examination with delay for the invention patent should be filed at the same time that the applicant files the request for substantive</u></p>	<p>AIPLA welcomes CNIPA’s proposal to provide a mechanism to delay examination of applications. This amendment brings Chinese practice more closely into alignment with international standards of examination.</p>

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<p>申请人在提交实用新型和外观设计申请的同时提出。延迟期限为自提出延迟审查请求生效之日起 1 年、2 年或 3 年。延迟期限届满后, 该申请将按顺序待审。必要时, 专利局可以自行启动审查程序, 申请人提出的延迟审查请求视为未提出。</p>	<p><u>examination, but the request for the examination with delay for the invention patent comes into effect as of the date when the request for substantive examination comes into effect; the request for the examination with delay for the utility model and design should be submitted at the same time that the applicant files the utility model application and design application. The time of delay is one year, two years or three years from the date on which the request for the examination with delay is filed. After the expiration of the above time of delay, the application will be examined in order. When necessary, the Patent Office may start the examination procedure on the initiative of the Patent Office, and the request for the examination with delay submitted by the applicant is deemed to have not been filed.</u></p>	
<p>8.4 专利局自行启动 对于专利局自行启动实质审查的专利申请, 可以优先处理。</p>	<p>8.4 Initiative of the Patent Office <u>For applications of which the substantive examination is started on the initiative of the Patent Office, examination may be conducted with priority.</u></p>	

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<p>第五部分第二章 专利费用</p> <p>7. 缴费信息的补充</p> <p>费用通过邮局或者银行汇付时遗漏必要缴费信息的，可以在汇款当日通过传真或者电子邮件的方式补充。补充完整缴费信息的，以汇款日为缴费日。应当在汇款当日通过专利局规定的方式及要求补充。当日补充不完整而再次补充的，以专利局收到完整缴费信息之日为缴费日。</p> <p>补充缴费信息的，应当提供邮局或者银行的汇款单复印件、所缴费用的申请号(或专利号) 及各项费用的名称和金额。同时，应当提供接收收据人的姓名或者名称、地址、邮政编码等信息。补充缴费信息如不能提供邮局或者银行的汇款单复印件的，还应当提供汇款日期、汇款人姓名或者名称、汇款金额、汇款单据号等信息。</p>	<p>Part V Chapter 2 Patent fee</p> <p>7. Supplemental Information for Payment</p> <p>Where the fees are paid by postal or bank remittance without the required information of payment, the party concerned <u>shall supplement the information according to the regulations of the patent office on the day of the remittance</u>can provide the complete information by fax or email on the day of remittance, and the date of remittance shall be the date of payment. Where the supplement is incomplete on the day of remittance, the party concerned can provide the complete information once more, and the day on which the complete information is provided shall be the date of payment.</p> <p>Where the information for payment is supplemental, the party concerned shall provide the copy of money order of the bank or a voucher of the postal remittance, the application number (or patent number), the title and amount of each fee. In addition, the following information of the person that receives the receipts shall be provided: the title or name, address, and postal code etc. If</p>	

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	the party concerned cannot provide the duplicate copy of the bank money order or the voucher of the postal remittance, it or he shall provide the date of remittance, the title or name of remitter, the amount of the fee and money order number, etc.	