

Source language	Chinese
Target language	English
Original filename	D:\project alignment\finished\5.4 Patent Application Files_CN.doc

1	第四章 专利申请文档	Chapter 4 Patent Application Files
2	1. 文档及组成	1. Patent Application Files and the Composition Thereof
3	专利申请文档是在专利申请审查程序中以及专利权有效期内逐步形成、并作为原始记录保存起来以备查考的各种文件的集合，包括案卷和电子文档。	The files of a patent application are a collection of the documents of a patent application accumulated and kept as the original record for verification purpose in the procedures of examination and approval and in the valid term of the patent right. There are two kinds of patent application files, that is, paper files (dossier) and electronic files.
4	专利申请文档是专利局进行审批和作出各种结论的依据。	Patent application files are the basis for examination of the patent application and for making various decisions by the Patent Office.
5	2. 案卷	2. Dossier
6	案卷包括案卷夹和案卷夹内的各种文件。	Dossier includes a folder and various documents therein.
7	2.1 案卷夹	2.1 Folder
8	案卷夹用于保存文件，同时也用于记录案卷的重要内容，因此案卷夹是案卷的一个重要组成部分。	A folder is used to keep the documents and record the important contents of the file. Hence, it is an important part of the file as a whole.
9	当案卷夹遭到自然或者人为的损坏需要更换新案卷夹时，应当将案卷夹上的全部记录移至新案卷夹上，并将原案卷夹与案卷同时保存，不得销毁。	When the folder has to be changed due to natural or intentional damage, the complete record on the folder shall be moved to the new folder, and the old folder shall be kept with the file and shall not be destroyed.
10	案卷夹设有两个文件装订条和两个文件袋。	A folder consists of two binding strips and two document pockets.
11	第一装订条上装订申请人向专利局提出专利申请时首次递交的各种文件（含专利申请文件和其他文件）、受理通知书和缴纳申请费通知书或者费用减缓审批通知书的正本。	On the first binding strip, there shall be kept the documents first submitted by the applicant (including the patent application documents and other documents) when the applicant files the patent application with the Patent Office and the original copies of the Notification of Acceptance and Notification to Pay Filing Fees or Notification of Decision on Reduction of Fees.
12	第二装订条上装订提出专利申请之后产生的其他文件。	On the second binding strip, there shall be kept other documents coming into being after the patent application is filed.
13	第一文件袋用于存放尚未处理或者尚未处理完毕的各种文件。	In the first document pocket, there shall be kept the various documents that haven't been processed or under processing.
14	第二文件袋用于存放公报袋。	In the second document pocket, there shall be kept the bags for Gazette,
15	公报袋内存放公开或者授权文件。	in which the documents for publication or for grant of patent right are kept.
16	案卷夹的封面用于记载主要的审批流程和法律状态，必要时可以在封二、封三和封底分别记载已缴纳费用的情况及收、发文件的名称等。	The front cover of the folder is used to record the main examination and approval procedure and the legal status of the application, and if necessary, the status of paid fees and the title of the documents received or issued, etc., may be recorded respectively on the inside front cover, inside back cover or the back cover of the folder.
17	2.2 文件	2.2 Documents
18	专利申请案卷中的文件主要来自以下四个方面：	The documents in the patent application file are mainly from the following four sources:
19	(1) 申请人提出专利申请时，提交的专利申请文件及其他文件。	(1) the patent application documents and other documents submitted by the applicant in filing the application;

20	(2) 专利局在对专利申请文件进行审查的过程中, 审查员作出的决定和通知以及申请人应审查员要求作出的各种答复。	(2) the decisions and notifications issued by the examiner and the various documents submitted by the applicant in response to the same in the course of examination of the patent application documents by the Patent Office;
21	(3) 提出专利申请之后申请人主动办理各种手续时提交的文件及证明材料。	(3) the documents and certifying materials submitted by the applicant in going through formalities on his own initiative after filing the patent application; and
22	(4) 在专利申请审查程序中以及专利权有效期内, 任何人依法对专利申请(或专利)提出的各种文件以及专利局、专利复审委员会、人民法院等部门对这些文件审理后产生的文件。	(4) the various documents submitted by any person concerning the patent application (or patent) and the documents produced by the Patent Office, the Patent Reexamination Board, and the People's Courts etc. in examining these documents in the course of examination of the patent application and in the valid term of the patent right.
23	上述文件经过处理、立卷、归档形成案卷的重要组成部分。	The above-mentioned documents, after being properly handled, established and placed in file, constitute important components of the file.
24	2.3 案卷的立卷	2.3 Establishment of Files
25	2.3.1 原则	2.3.1 Principles
26	立卷时应当遵循以下原则:	During establishment of files, the following principles shall be complied with.
27	(1) 真实原则。	(1) Principle of authenticity.
28	收集的内容应当是申请人、专利权人、其他利害关系人、审查员等在申请专利、专利申请的审批、授权后各个法律程序中产生的原始文件。	The collection shall be the original documents provided by the applicant, patentee, other parties concerned, examiner, etc., during the procedures of filing, examination and approval and various legal proceedings after grant of patent right.
29	这些文件不得替换、删除、补充和涂改。	These documents shall not be replaced, deleted, supplemented or altered.
30	需要更正的应当作出更正决定, 并说明理由。	Where any correction needs to be made, a decision of amendment shall be made, and the reasons therefor shall be stated.
31	(2) 独立原则。	(2) Principle of one file for one application.
32	每一件专利申请应当建立一份独立的案卷, 以该专利申请的申请号作为该案卷的案卷号, 该案卷号用于案卷存在的全过程。	One patent application shall have one independent file with the application number as the number of the file, which shall be used for the entire existence of the file.
33	同一申请人(或专利权人)对若干专利申请(或专利)办理内容完全相同的手续时, 应当分别对所有专利申请(或专利)提出请求, 这些文件将被归入各自的案卷中。	Where the same applicant (or patentee) intends to go through the identical formalities in respect of several patent applications or patents, he shall submit a request for each of the patent applications or patents respectively and the related documents shall be placed in their respective files.
34	申请人(或专利权人)不得使用“参见”的方式省略文件。	The applicant (or patentee) shall not leave out any document by using "refer to ..." for cross-reference.
35	对于专利申请集体进行申请人(或专利权人)名称变更或者权利转移的, 证明文件副本由专利局确认后, 与正本具有同等效力。	Where patent applications are put together to make changes in the name or title of the applicant (or patentee) or the transfer of right, the duplicate copy of the certifying document affirmed by the Patent Office shall have the same effect as the original one.
36	专利局向同一申请人的多件专利申请发出内容相同的通知或者决定时, 均应当对每一件专利申请发出通知或者决定, 不得省略。	Where the Patent Office issues notification or decision of the same contents in respect of several patent applications of the same applicant, each patent application shall be issued with one notification or decision. No omissions are allowed.
37	(3) 时间顺序原则。	(3) Principle of chronological order.
38	当事人依法向专利局办理各种手续时, 专利局应当对所提出的各种文件及时处理, 并立卷归档; 审查员在	Where a party concerned goes through the formalities before the Patent Office in accordance with the law, the Patent Office shall handle and

	审查过程中作出的各种通知或者决定也应当立卷归档。	place in file the various documents submitted by him in time. In addition, the various notifications or decisions made by the examiners in the course of examination shall also be placed in file.
39	专利申请案卷应当按照各文件处理时间的先后顺序立卷。	The documents in a patent application file shall be placed in chronological order according to the time when they are handled.
40	2.3.2 案卷夹的记载	2.3.2 Record of Folder
41	2.3.2.1 文件的记载	2.3.2.1 Record of Documents
42	申请人提出专利申请时首次提交的各种文件、受理通知书和缴纳申请费通知书或者费用减缓审批通知书应当按照顺序装订。	The documents submitted for the first time by the applicant when filing the patent application, a Notification of Acceptance and a Notification to Pay Filing Fees or a Notification of Decision on Reduction of Fees shall be bound in order.
43	发明或者实用新型专利申请的装订顺序为：请求书、说明书摘要、摘要附图、权利要求书、说明书、说明书附图；外观设计专利申请的装订顺序为：请求书、图片或者照片、简要说明。	For patent application for invention or utility model, the binding order shall be as follows: request, abstract of description, figure accompanying the abstract, claims, description and drawings of the description. For patent application for design, the binding order shall be as follows: request, drawing or photograph, and the brief explanation.
44	2.3.2.2 法律状态的记载	2.3.2.2 Record of Legal Status
45	专利申请的重要法律状态（主要有初审合格、视为撤回、撤回、公布、驳回、授权、视为放弃专利权、专利权终止、宣告专利权无效等），特别是结案状态，应当记载在案卷夹封面的相应栏目内。	The important legal status of the patent application (mainly include passing preliminary examination, being deemed to be withdrawn, being withdrawn, publication, rejection, grant of patent right, patent right deemed to be abandoned, termination of the patent right, declaration of invalidation of the patent right, etc.), in particular the status of the winding-up of the application, shall be recorded in the corresponding item of the front cover of the folder.
46	2.3.2.3 其他记载	2.3.2.3 Record of Other Matters
47	分类号、所属审查部门、各种标记（如优先权标记、实审请求标记、保密标记等）应当记载在案卷夹封面相应栏目内。	The classification number, the examination department in charge of the examination and various marks (such as mark of priority, mark of request for substantive examination, mark of confidentiality, etc.) shall be recorded in the corresponding item of the front cover of the folder.
48	2.3.2.4 记载方式	2.3.2.4 Method of Record
49	案卷夹上手工填写的记载应当使用蓝色或者黑色圆珠笔或者钢笔，不得使用铅笔等易擦去字迹的工具填写；盖章完成的记载，印章应当清晰。	The record filled in the folder by hand shall be in blue or black ballpoint pen or in fountain pen other than pencil or other instruments by which the word written can be erased easily. The seal shall be clear for sealed record.
50	记载有误需要更正时，由审查员在更改处签字或者盖章，并使被更正的内容依然可见。	When it is necessary to make any correction in the record, the examiner shall sign or seal at the place of the correction, and shall keep the contents corrected still legible.
51	2.4 案卷的整理与分册	2.4 Putting Files in Order and Dividing Files into Volumes
52	审查程序结束时，审查员应当对专利申请案卷进行整理。	When the examination procedure is over, the examiner shall put the patent application file in order.
53	当案卷内文件总页数超过 150 页时，应当分册装订一并保管。	Where the total pages of the documents in the file are over 150 pages, the documents shall be kept together in separate volumes.
54	分册时，应当在各分册的封面上作出明显标记，并且在首册上注明总册数。	When the documents are divided into separate volumes, clear marks shall be made on the cover of each volume and the total number of the volumes shall be indicated on the first volume.
55	3. 电子文档	3. Electronic Files

56	电子文档的建立应当参照本章第 2.3.1 节的原则, 并包括以下内容:	The establishment of electronic files shall comply with the principles in section 2.3.1 of this chapter, and the following contents shall be included:
57	(1) 专利局以纸件文件为基础制作的, 以规定的格式保存于电子文档系统中的文件。	(1) documents made by the Patent Office on the basis of paper documents and kept in the electronic records system in prescribed form;
58	(2) 当事人按照规定形式提交的核苷酸或者氨基酸的序列表。	(2) the sequence listing of the nucleotide or amino acid submitted by the party concerned in accordance with the prescribed form;
59	(3) 在专利审批程序中, 专利局作出的并保存于电子文档系统中的通知、决定(如补正通知书、驳回决定等)及其他文件(如公布文本或者授权公告文本等)。	(3) notifications, decisions (such as Notification to Make Rectification, decision of rejection, etc.) and other documents (such as the publication text and the announced text of the granted patent, etc.) made by the Patent Office and kept in the electronic records system in the course of the patent examination and approval;
60	(4) 专利费用的相关数据。	(4) data of patent-related fees;
61	(5) 在专利审批程序中产生的法律状态及变化的历史记录。	(5) the historic record of the legal status and changes thereof in the course of the patent examination and approval;
62	(6) 在专利审批程序中全部著录项目及其变更的历史纪录。	(6) the historic record of all the bibliographic data and changes thereof in the course of the patent examination and approval; and
63	(7) 当事人以电子申请方式提交的电子文件。	(7) electronic documents submitted by the party concerned through electronic application.
64	4. 法律效力	4. Legal Effect
65	专利申请文档是对专利审批、复审、无效宣告等法律程序和涉及由权利归属纠纷的结果引起的相关程序的真实记录。	The patent application file is a true record of the legal procedures of the examination and approval, reexamination and invalidation declaration of the patent, as well as the relevant procedures resulting from disputes over ownership of right.
66	5. 查阅和复制	5. Consultation and Photocopying
67	5.1 查阅和复制的原则	5.1 Principles of Consultation and Photocopying
68	(1) 专利局对公布前的发明专利申请、授权公告前的实用新型和外观设计专利申请负有保密责任。	(1) Until the publication of a patent application for invention and the announcement of the grant of patent right for utility model or design, the Patent Office is liable to keep them in confidential.
69	在此期间, 查阅和复制请求人仅限于该案申请人及其代理人。	In this period, the requester for consultation or photocopying is limited only to the applicant and agent thereof.
70	(2) 任何人都可向专利局请求查阅和复制公布后的发明专利申请案卷和授权后的实用新型和外观设计专利申请案卷。	(2) Any person may file a request with the Patent Office to consult or photocopy the file of a published patent application for invention and the file of the application for utility model or design which has been granted a patent right.
71	(3) 对于已经审结的复审案件和无效宣告案件的案卷, 原则上可以查阅和复制。	(3) In principle, the files of reexamination or invalidation cases that have been concluded may be consulted or copied.
72	(4) 专利局、专利复审委员会对尚未审结的复审和无效案卷负有保密责任。	(4) The Patent Office and the Patent Reexamination Board shall bear the responsibility to keep the files of reexamination or invalidation cases that have not been closed in confidential.
73	对于复审和无效宣告程序中的文件, 查阅和复制请求人仅限于该案当事人。	For the documents of the procedure of reexamination or invalidation, the requester for consultation or photocopying is limited only to the party concerned of the said case.
74	(5) 案件结论为视为未提出、不予受理、主动撤回、视为撤回的复审和无效案卷, 对于复审和无效宣告程序中的文件, 查阅和复制请求人仅限于该案当事人。	(5) Where the conclusion of the reexamination or invalidation case is that the request is deemed not to have been filed, not accepted, actively withdrawn, or deemed to have been withdrawn, for the documents of the procedure of reexamination or invalidation, the requester for consultation or photocopying is limited only to the party concerned of the said case.

75	(6) 专利局、专利复审委员会根据审查需要要求当事人提供的各种文件，原则上可以查阅和复制。	(6) In principle, various documents provided by the party concerned upon the request of the Patent Office or the Patent Reexamination Board in need of examination may be consulted or copied.
76	但如果查阅和复制行为可能存在损害当事人合法权益，或者涉及个人隐私或者商业秘密等情形的除外。	However, the above rule does not apply if consultation or photocopying may cause damage to the legitimate interest of the party concerned, or involve privacy or trade secrets, etc.
77	(7) 涉及国家利益或者因专利局、专利复审委员会内部业务及管理需要在案卷中留存的有关文件，不予查阅和复制。	(7) Relevant documents concerning the interests of the State or being kept in files for the internal operation or management needs of the Patent Office or the Patent Reexamination Board shall not be consulted or copied.
78	5.2 允许查阅和复制的内容	5.2 Contents Allowed for Consultation and Photocopying
79	(1) 对于公布前的发明专利申请、授权公告前的实用新型和外观设计专利申请，该案申请人或者代理人可以查阅和复制该专利申请案卷中的有关内容，包括：申请文件，与申请直接有关的手续文件，以及在初步审查程序中向申请人发出的通知书和决定书、申请人对通知书的答复意见正文。	(1) For a patent application for invention before publication and a patent application for utility model or design before the announcement of the grant of patent right, the applicant or agent thereof may consult or photocopy the relevant contents in the said patent application files, including the application documents, the formality documents directly relating to the application, notifications and decisions sent to the applicant in the preliminary examination procedure, and the text of the observations submitted by the applicant in response to the notifications.
80	(2) 对于已经公布但尚未公告授予专利权的发明专利申请案卷，可以查阅和复制该专利申请案卷中直到公布日为止的有关内容，包括：申请文件，与申请直接有关的手续文件，公布文件，以及在初步审查程序中向申请人发出的通知书和决定书、申请人对通知书的答复意见正文。	(2) For the file of a patent application for invention which has been published and the grant of patent right has not been announced, the contents in the file which may be consulted and copied relate to those before the date of the publication, including the application documents, formality documents directly relating to the application, publication documents, notifications and decisions sent to the applicant in the preliminary examination procedure and the text of the observations submitted by the applicant in response to the notifications.
81	(3) 对于已经公告授予专利权的专利申请案卷，可以查阅和复制的内容包括：申请文件，与申请直接有关的手续文件，发明专利申请公布文件，授权公告文件，以及在各已审结的审查程序（包括初步审查、实质审查、复审和无效宣告等）中专利局、专利复审委员会向申请人或者有关当事人发出的通知书和决定书的正文、申请人或者有关当事人对通知书的答复意见正文。	(3) For the file of a patent application for which grant of patent right has been announced, the contents in the file which may be consulted and copied include the application documents, the formality documents directly relating to the application, publication documents for the patent application for invention, documents of announcement on grant of the patent right, the text of the various notifications and decisions issued by the Patent Office or the Patent Reexamination Board to the applicant or parties concerned and the text of the observations submitted by the applicant or the parties concerned in response to the notifications in the examination proceedings which have been closed (including procedures of preliminary examination, substantive examination, reexamination and invalidation, etc.).
82	(4) 对于处在复审程序、无效宣告程序之中尚未结案的专利申请案卷，因特殊情况需要查阅和复制的，经有关方面同意后，参照上述第（1）和（2）项的有关规定查阅和复制专利申请案卷中进入当前审查程序以前的内容。	(4) For the file of patent applications which are still under reexamination or invalidation and have not been closed, where consultation and photocopying of the file is necessary due to special needs, the contents in the file before the current procedure may be consulted and copied upon the approval of the competent authorities in accordance with the relevant provisions set forth in preceding paragraph (1) and (2).
83	(5) 除上述内容之外，其他文件不得查阅或者复制。	(5) Except for the contents mentioned above, consultation or photocopying of other documents shall not be allowed.

84	5.3 查阅和复制程序	5.3 Procedures for Consultation and Photocopying
85	查阅和复制专利申请案卷中的文件，应当按照下列顺序进行：	The following procedures shall be followed for consultation and photocopying of the documents in the file of a patent application:
86	(1) 请求人提出书面请求并缴纳规定费用。	(1) the requester shall file a request in written form and pay the prescribed fees;
87	(2) 专利局工作人员在审核请求人出具的有关证明或者证件后，到案卷所在部门提取案卷，根据本章第5.2节的规定对案卷进行整理，取出不允许查阅和复制的文件。	(2) after having verified and checked the relevant certificates or identification provided by the requester, a staff member of the Patent Office shall retrieve the file from the department where the file is kept and sort out the file in accordance with the provisions of Section 5.2 of this Chapter and take out the documents of which no consultation or photocopying is allowed;
88	(3) 与请求人约定查阅时间并发出查阅通知书。	(3) the Patent Office makes an appointment with the requester and issues a Notification of Approval of Consultation;
89	(4) 查阅人凭查阅通知书到指定地点查阅文件，对需要复制的文件进行复制。	(4) the requester for consultation may, after producing the Notification of Approval of Consultation, consult the documents at the designated place and photocopy the documents as needed; and
90	(5) 专利局工作人员对查阅完毕的专利申请案卷重新整理，并将请求阅档的证明原件和证件复印件存入案卷后，将该案卷退回所在部门。	(5) the staff member of the Patent Office shall rearrange the patent application file that has been consulted, put in the file the original copy of the certificates for consultation and the duplicate copy of the identification, and return the file to the department concerned.
91	6. 案卷的保存期限和销毁	6. Preservation Period and Destruction of File
92	6.1 保存期限	6.1 Preservation Period
93	已结案的案卷可分成：未授权结案（视为撤回、撤回和驳回等）的案卷和授权后结案（视为放弃取得专利权、主动放弃专利权、未缴年费专利权终止、专利权期限届满和专利权被宣告全部无效等）的案卷两种。	The files of the closed cases are divided into two categories: files of patent applications that are closed without being granted a patent right (having been deemed to have been withdrawn, having been withdrawn or having been rejected) and files of patent applications that are closed after being granted a patent right (having been deemed to have abandoned the entitlement to patent, patent right having been abandoned on the patentee's own initiative, termination of the patent right due to nonpayment of the annual fee, expiration of the patent right, patent right being wholly invalidated, etc.).
94	未授权结案的案卷的保存期限为三年；授权后结案的案卷的保存期限为五年。	The preservation period for the files of patent applications closed without being granted a patent right is three years and for the files of patent applications closed after being granted a patent right is five years,
95	保存期限自结案日起算。	calculated from the closing date of the relevant examination procedure.
96	有分案申请的原申请的案卷的保存期从最后结案的分案的结案日起算。	The preservation period for the files of the original application of divisional applications shall be calculated from the last closing date of the divisional applications.
97	作出不予受理决定的专利申请文件保存期限为一年。	The preservation period for the files of patent applications upon which a Notification of Nonacceptance has been issued is one year,
98	保存期限自不予受理通知书发出之日起算。	calculated from the date on which the Notification of Nonacceptance is issued.
99	6.2 销毁	6.2 Destruction
100	销毁前通过计算机作出案卷销毁清册，该清册记载被销毁的案卷的案卷号、基本著录项目、销毁日期。	Before destruction, an inventory of files to be destroyed shall be created by the computer. The inventory shall include the file number, the basic bibliographic data and the date of destruction for

		each file to be destroyed.
101	清册经主管局长签署同意销毁后，由主管案卷部门实施销毁工作。	After the Commissioner in charge approves the destruction, the department in charge of keeping the files shall execute the work of destruction.

<http://www.giprs.org>
Global IPRs Research Center
Copyright © G-IPRs
Some Rights Reserved