

# 發明專利加速審查作業方案

111年1月1日修正施行

本局為顧及專利申請人權益且使其更加彈性運用本方案，爰修正 98 年 1 月 1 日起試辦之方案，並自 99 年 1 月 1 日起開始受理本方案申請。

為落實使用者付費原則，自 100 年 7 月 1 日起，本方案之事由 3 應繳納申請規費。

自 103 年 1 月 1 日起，為鼓勵綠能相關技術之發展，新增事由 4 之申請條件，事由 4 應繳納申請規費；自 111 年 1 月 1 日起，事由 4 之「綠能技術」修正為「綠色技術」。

發明專利申請案經本局通知即將進行實體審查或再審查後，符合下列所述四種事由之一者，申請人得檢附相關文件提出「發明專利加速審查」申請。

## 一、方案內容

### 1、事由 1：外國對應申請案經外國專利局實體審查而核准者

所謂「外國對應申請案」可為與在我國主張優先權之基礎案屬同一專利家族者，但不排除未於我國主張優先權之對應申請案，其判斷原則為申請案之申請專利範圍中所載發明已揭露於該對應申請案之說明書或圖式中。

申請人在依據事由 1 提出加速審查時，應提供其外國對應申請案於核准前所接獲之所有審查意見通知書和檢索報告，若是沒有檢索報告，則無需提供。

依事由 1 申請加速審查所須檢附文件包括：

- (1) 發明專利加速審查申請書 1 份。
- (2) 外國專利局已核准公告之申請專利範圍(含中譯本)或外國專利局之核准通知影本及其即將公告之申請專利範圍(含中譯本)。
- (3) 外國專利局於審查過程中所核發之所有審查意見通知書及檢索報告；若為中文或英文以外者，並應提供中文簡要說明。
- (4) 前述(2)申請專利範圍中譯本與向本局提出申請案之申請專利範圍間之差異說明(如二、撰寫格式 1、範例 1)。如無不同，則於前述(1)申請書中勾選「無差異免送」即可。
- (5) 前述(3)中指出對應案違反新穎性或進步性之非專利文獻影本(專利文獻無需檢送)。

上述(1)至(3)為必需檢送之文件；(4)若符合所述之無差異情況，則可免送；

(5)若無，則可免送。另外申請人可一併提出任何其認為有利於本局加速審查之文件，例如：申請人向外國專利局提出之申復文件，或若有引證文獻指出對應案違反新穎性或進步性時，申請人可說明本申請案具可專利性之理由。

依據上述事由 1 所提出的加速審查，考量其他國家之 PPH 制度，大多限定只有尚未開始審理之案件(即未接獲專利局發出之審查意見通知者)才可以提出申請。而本方案接受所有審查中的案件均可提出加速審查之申請，因此若本局審查人員已經對該申請案核發過審查意見通知，要求申請人限縮其申請專利範圍，且申請人亦已進行限縮，致該案修正成較狹窄之申請專利範圍者，為避免浪費行政成本，申請人不得以外國核准範圍較國內申請案已修正之申請專利範圍大之外國案核准文件，為加速審查之依據。

原則上，依事由 1 申請加速審查申請案，將於申請人齊備相關文件後 6 個月內發出審查結果通知(包含審查意見通知函、最後通知或審定書)。但實際審查時間得另視申請案件所屬技術領域而定。

## **2、事由 2：外國對應申請案經美日歐專利局核發審查意見通知書及檢索報告但尚未審定者**

申請人在依據事由 2 提出加速審查時，至少應提供第一次審查意見通知書和其之前所得到的檢索報告(包括歐洲專利局主動發出，或是 PCT 指定三局所發出之檢索報告)，若是沒有檢索報告，則無需提供。

依事由 2 申請加速審查所須檢附文件包括：

- (1)發明專利加速審查申請書 1 份。
- (2)美日歐專利局核發之審查意見通知書所依據之申請專利範圍(含中譯本)。
- (3)美日歐專利局核發之審查意見通知書及檢索報告影本；若為英文以外者，應提供中文簡要說明。
- (4)前述(2)申請專利範圍中譯本與向本局提出申請案之申請專利範圍間之差異說明(如二、撰寫格式 1、範例 1)，如無不同則於前述(1)之申請書中勾選「無差異免送」即可。
- (5)前述(3)所檢附的審查意見通知書及檢索報告中，若有引證文獻指出該對應案違反新穎性或進步性者，申請人須說明本申請案具可專利性之理由(如二、撰寫格式 2、範例 2)。

(6) 前述(5)之引證文獻若包括非專利文獻，應檢送該非專利文獻影本(專利文獻無需檢送)。

上述(1)至(3)為必需檢送之文件；(4)若符合所述之無差異情況，則可免送；(5)及(6)若無，則可免送。另外，申請人可一併提出任何其認為有利於本局加速審查之文件，例如：申請人申復外國專利局之申復文件、第二次或之後之審查意見等。

依事由 2 申請加速審查申請案，本局審查結果通知時間將視不同情況而有不同。倘申請人提出之外國專利案申請專利範圍與向本局提出申請案之申請專利範圍間無差異(也就是前述(4)中所述之無差異情況者)，將於申請人齊備相關文件後 6 個月內發出審查結果通知(包含審查意見通知函、最後通知或審定書)；對於不符前述(4)中所述之無差異情況者，將於申請人齊備相關文件後 9 個月內發出審查結果通知(包含審查意見通知函、最後通知或審定書)。但兩者實際審查時間得另視申請案件所屬技術領域而定。

### **3、事由 3：為商業上之實施所必要者**

申請之專利案為申請人商業上之實施所必要者，為使申請人儘速明確其申請案之可專利性，得提出加速審查申請。依事由 3 提出加速收審查者，所需檢附文件包括發明專利加速審查申請書 1 份及能夠說明申請人商業上實施必要之相關證明文件(例如已洽談授權契約、廣告目錄等)，與申請規費每件新臺幣 4000 元。

原則上，依事由 3 申請加速審查申請案，本局將在申請人齊備相關文件後 6 個月內發出審查結果通知(包含審查意見通知函、最後通知或審定書)。但實際審查時間得另視申請案件所屬技術領域而定。

### **4、事由 4：所請發明為綠色技術相關者**

專利申請案之發明係與綠色技術相關者，為使申請人能儘速明確其申請案之可專利性進而使用綠色技術發明，得提出加速審查申請。依事由 4 申請加速審查時，所需檢附之文件包括發明專利加速審查申請書 1 份及該申請案所請發明為綠色技術相關之說明(如二、撰寫格式 3、範例 3)，與申請規費每件新臺幣 4000 元。

符合下列綠色技術相關之專利申請案，可提出發明專利加速審查：

- (1) 涉及節省能源技術、新能源、新能源汽車等技術領域之發明專利申請案。
- (2) 涉及減碳技術及節省資源使用之發明專利申請案。

申請綠色技術相關之加速審查申請案，其請求項所請發明須與我國綠色技術範圍所包括之技術直接相關，或藉由說明書、圖式內容或其他資料佐證請求項所請發明屬於我國綠色技術範圍所包括之相關技術。

原則上，依事由 4 申請加速審查申請案，本局將在申請人齊備相關文件後 6 個月內發出審查結果通知(包含審查意見通知函、最後通知或審定書)。但實際審查時間得另視申請案件所屬技術領域而定。

有關「發明專利加速審查申請書」，申請人可自本局網站下載填寫後提出申請，另外本局網站上亦有提供「發明專利加速審查作業方案答客問」，將常見問題整理提供申請人參考。

## 二、撰寫格式

### 1、範例 1：外國對應案與向本局提出申請案之申請專利範圍之差異說明

(本國申請案) 第 951xxxxx 號申請案 現行申請專利範圍項次	(外國對應申請案) US xxxxxxxxB2 申請專利範圍項次	對應本國案之差異說明
1-3	無	外國對應案無對應請求項
4(獨立項)	1(獨立項)	內容相同
5	2	內容相同
6(獨立項)	3(獨立項)	本案第 6-8 項合併後相當於對應案第 3 項
7		
8		
9	4	相當於對應案第 4 項依附至第 3 項之內容
無	5	本案無請求
10(獨立項)	6(獨立項)	對應案於基質前加入「乾燥」二字
11(獨立項)	7(獨立項)	本案較對應案增加「視情況旋轉」之敘述
12(獨立項) <申請專利範圍內容>	8(獨立項) <申請專利範圍內容>	差異內容如劃線部分所示。(申請專利範圍內容差異較多時，建議以此方式呈現)
13	9	相當於對應案第 9 項之附加技術特徵依附至本案第 12 項

### 2、範例 2：具可專利性之理由

(新穎性) 本案請求項 1 獨立項所述裝置，其在側踏板底部設有軌槽，而引證 1<文件編號>中揭示之裝置則無此軌槽之設置，故本案請求項 1 所請裝置相較於引證 1 具有新穎性。

(進步性) 本案請求項 1，與引證 2<文件編號>相較，其差異在於<簡述本項與引證 2 技術特徵之差異>，且<簡述對於本項所屬技術領域中具通常知識者而言非能輕易完成之理由>，故本請求項相較於引證 2，非為該發明所屬技術領域中具通常知識者依申請前之先前技術，所能輕易完成者。

### 3、範例 3：申請案之請求項為綠色技術相關說明

- (1) 請求項 1 記載的「太陽能電池」，係 XX 利用△△可有效的吸收太陽能並加以儲存，為太陽能源相關之技術領域。
- (2) 請求項 1 記載的「金屬氧化物」，於說明書的【0000】段落載明，該金屬氧化物係使用於 LED 照明，並可提供每瓦 XXX 流明(lm/w)，具有提升亮度節省能源之效果。
- (3) 請求項 1 記載的「油電引擎」，於申請案【0000】段落載明，該引擎係使用電動馬達和雙傳動系統，具有減少二氧化碳排放量之效果。
- (4) 請求項 1 記載的「變頻式發動機」，為關於「離岸風力」研究計畫之研發成果。檢附相關研究計畫成果報告首頁及摘要 1 份。

### 三、發明專利加速審查作業方案對照簡表

申請事由		1、外國對應申請案經外國專利局實體審查而核准者	2、外國對應申請案經美日歐專利局核發審查意見通知書及檢索報告但尚未審定者	3、為商業上之實施所必要者	4、所請發明為綠色技術相關者		
外國專利局		不限	美國、日本、歐洲專利局	無	無		
請求時間		已通知進行實體審查或再審查後					
申請時要件	加速審查申請書	✓	✓	✓	應敘明商業實施狀況	✓	應敘明綠色技術相關之範疇
	對應案申請專利範圍(含中譯本)	✓	公告或核准申請專利範圍(未公告者須附核准通知影本)	✓	外國專利局審查意見通知中所依據之申請專利範圍	×	×
	差異說明	△	無差異時免送	△	無差異時免送	×	×
	外國檢索報告/審查意見通知書	✓	為中文或英文以外者應提供中文簡要說明	✓	為英文以外者應提供中文簡要說明	×	×
	具可專利性之理由	×	申請人認為有利加速審查時可提供	△	無指出對應案違反新穎性或進步性引證時免送	×	×
	非專利文獻影本	△	僅需檢送指出對應案違反新穎性及進步性之文獻	△	僅需檢送指出對應案違反新穎性及進步性之文獻	×	×
	申請人商業實施證明文件	×		×		✓	×
	綠色技術相關之說明	×		×		×	✓
加速審查規費		不需繳納規費		不需繳納規費		每件新台幣 4000 元	
智慧局於文件齊備後發出審查結果所需時間		6 個月		申請範圍無差異	申請範圍有差異	6 個月	
				6 個月	9 個月		
		實際審查時間得另視申請案件所屬技術領域而定					

註：✓須檢附之要件；△視情況檢附之要件；×無須檢附之要件。

## Accelerated Examination Program (AEP)

Date amended: 1/January/2022

Date effective: 1/January/2022

Starting January 1, 2010, TIPO began accepting requests for the Accelerated Examination Program (AEP), revised out of its earlier pilot version launched on January 1, 2009, to allow for more flexibility in the program while taking into account applicants' rights and interests.

In observance of user-pay principle, applicants requesting AEP on and after July 1, 2011 make a payment for AEP request fees as stipulated in Condition 3.

To encourage green technology development, TIPO added Condition 4, stipulating that applicants requesting AEP on and after January 1, 2014 make a payment for AEP request fees; the phrasing "green energy technologies" was amended to read "green technologies," effective on January 1, 2022.

Having been notified by TIPO that the invention application will soon be undergoing substantive examination or re-examination, the applicant whose invention application meets one of the following conditions may proceed to request AEP with relevant documents.

### **A. The Four Conditions**

#### **1. Condition 1: The corresponding application has been approved by a foreign patent authority under substantive examination**

The so-called "corresponding foreign application" (or foreign counterpart) is one belonging to the same patent family as the TIPO application and whose priority may or may not have been claimed in Taiwan. Such affinity is determined upon whether the claims of the patent application have been disclosed in the specification or drawings of its foreign counterpart.

The applicant requesting AEP under Condition 1 should provide all of the OAs and, if any, search reports issued prior to the approval of the foreign counterpart of the patent application.

The required documents include:

- a. A copy of the AEP request form;
- b. A copy of the approved patent claims issued by a foreign patent authority (with Chinese translation), or a copy of notice of allowance and to-be-published patent claims issued by a foreign patent authority (with Chinese translation);
- c. All of the OAs and, if any, search reports issued by a foreign patent authority; a summary in Chinese must be provided alongside with these documents written in languages other than Chinese or English;
- d. If there are differences, an explanation thereof between Chinese translation of the claims in “b” and those in the application filed with TIPO (please refer to B. Format 1, Example 1); if not, the applicant should tick the box on “not different” in the request form;
- e. A copy of non-patent literature indicating (as in “c”) the foreign counterpart’s failure of compliance with the novelty or inventive step requirements (patent literature not required); and.

With regard to the required documents, those mentioned in “a”-“c” must be provided; in “d,” no explanation needed if there isn’t any difference; and in “e,” no non-patent literature needed if there isn’t any failure of compliance. In addition, the applicant may provide any documents to expedite the examination process (e.g. a written reply to foreign patent authority or, reasons for patentability of the pending TIPO application, regarding which the citations indicate its foreign counterpart’s failure of compliance with the novelty and/or inventive step requirements).

Unlike other foreign patent authorities running PPH where accelerated examination requests (similar to Condition 1) are restricted to patent applications that have not begun examination (i.e. the applicant not having received OA from patent authority), TIPO accepts AEP requests for all applications currently undergoing examination. It should be noted that the applicant having narrowed patent claims in accordance with the OA issued by TIPO may not request AEP using foreign application whose claims have been approved by a foreign patent authority and are broader in

scope than the one with narrower claims.

In principle, the examination results (a notification of responsive examination opinions, final notice or written decision of examination) will be issued within 6 months after all the relevant documents have been received. The actual examination pendency, however, may vary depending on the technical field(s) of respective cases.

## **2. Condition 2: The EPO, JPO or USPTO has issued an OA during substantive examination but has yet to approve the application's foreign counterpart**

The applicant requesting AEP should provide at least the first OA (issued by the EPO, JPO, or USPTO) and the EPO's European search report, or the PCT-designated International Search Report (ISR) from the EPO, JPO, or USPTO.

The required documents include:

- a. A copy of the AEP request form;
- b. A copy of patent claims based upon the OA issued by the EPO, JPO, or USPTO (with Chinese translation);
- c. A copy of the OA and search report issued by the EPO, JPO or USPTO; all of the OAs and, if any, search report issued by a foreign patent authority; a summary in Chinese must be provided alongside with these documents written in languages other than English;
- d. If there are differences, an explanation thereof between Chinese translation of the claims in "b" and those in the application filed with TIPO (please refer to B. Format 1, Example 1); if not, the applicant should tick the box on "not different" in the request form;
- e. The applicant should provide reasons for patentability of the pending TIPO application (please refer to B. Format 2, example 2), with respect to citations in the OA or search report (as mentioned in "c") indicating its foreign counterpart's failure of compliance with the novelty and/or inventive step requirements;
- f. A copy of non-patent literature containing citations as mentioned in "e" (patent literature not required); and

With regard to the required documents, those mentioned in “a”-“c” must be provided; in “d,” no explanation needed if there isn’t any difference; and in “e” and “f,” no non-patent literature needed if there isn’t any failure of compliance. In addition, the applicant may provide any documents to expedite the examination process (e.g. a written reply to foreign patent authority or subsequent OAs).

The pendency for TIPO’s issuing examination results for AEP requested under Condition 2 may vary depending on the following. For instance, if there is no difference between the pending TIPO application and its foreign counterpart (the “not different” in “d”), the examination results (a notification of responsive examination opinions, final notice or written decision of examination) will be issued within 6 months after all the relevant documents have been received. In case there are differences, the examination results (a notification of responsive examination opinions, final notice or written decision of examination) will be issued within 9 months after all the relevant documents have been received. The actual examination pendency, however, may vary depending on the technical field(s) of respective cases.

### **3. Condition 3: The invention application is essential to commercial exploitation**

The applicant whose invention has been put into practical use (e.g. commercial exploitation) may request AEP to ascertain its patentability at the earliest. The applicant requesting AEP under Condition 3 should provide a copy of the AEP request form, proofs of evidence indicating the invention’s commercial exploitation (e.g. licensing agreements, marketing brochures, and commercial catalogs), and make a payment of NT\$4,000 (per request).

In principle, the examination results (a notification of responsive examination opinions, final notice or written decision of examination) will be issued within 6 months after all the relevant documents have been received. The actual examination pendency, however, may vary depending on the technical field(s) of respective cases.

#### **4. Condition 4: Inventions related to green technologies**

The applicant whose invention involves green technologies may request AEP to ascertain its patentability at the earliest. The applicant requesting AEP under Condition 4 should provide a copy of the AEP request form, a written explanation indicating the connection between the invention and green technologies (please refer to B. Format 3, Example 3), and make a payment of NT\$4,000 (per request).

The applicant whose inventions involve the following may request AEP:

- (1) Technologies for improving energy conservation and for developing new sources of energy, or renewable energy vehicles; or
- (2) Technologies for carbon reduction and resource saving.

The applicant requesting AEP must make sure that the claims of the invention should directly relate to the aforementioned green technology areas recognized in Taiwan. In addition, the applicant may do so by providing documents of proof (e.g. specification or drawings).

In principle, the examination results (a notification of responsive examination opinions, final notice or written decision of examination) will be issued within 6 months after all the relevant documents have been received. The actual examination pendency, however, may vary depending on the green technology field(s) of respective cases.

Applicants wishing to request AEP should visit TIPO website and download the request form. To learn more about this program, go to the “AEP Q&A” section of the website.

## B. Format

### 1. Example 1: Explanation of differences between pending claims at TIPO and the claims of foreign counterpart

(Pending claims at TIPO) No. 951xxxxx Pending numbers of claims	(Claims of foreign counterpart) US xxxxxxxB2 Numbers of claims	Explanation of differences
1-3	None	No corresponding claim in the foreign counterpart
4 (independent claim)	1 (independent claim)	Not different
5	2	Not different
6 (independent claim)	3 (independent claim)	Claim 3 in the foreign counterpart includes all of the technical characteristics recited in pending Claims 6-8 at TIPO
7		
8		
9	4	The scope of Claim 9 in the pending application is equivalent to the scope of Claim 4, which is dependent on Claim 3 in the foreign counterpart
None	5	No request
10 (independent claim)	6 (independent claim)	A description (“dryness”) has been inserted to Claim 6 in the foreign counterpart, resulting in its being narrower in scope than that of the pending Claim 10 at TIPO.
11 (independent claim)	7 (independent claim)	A description (“twirling under certain circumstances”) has been inserted to pending Claim 11, resulting in its being narrower in scope than that of Claim 7 in the foreign counterpart.
12 (independent claim) <content of claim>	8 (independent claim) <content of claim>	Differences are underlined. (Please use underlining to indicate differences in large number)
13	9	Claim 13 in the pending application is equivalent to the inserted technical characteristics of Claim 9

		in the foreign counterpart, which is dependent on Claim 12 in the pending application.
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## 2. Example 2: Reasons for patentability

(Novelty) Independent Claim 1 of this pending application contains the term ‘rails’ in the description of its device. In comparison, however, the device disclosed in Citation 1 <literature number> does not contain such term. In comparison to Citation 1, therefore, it is Claim 1 that meets the novelty requirement.

(Inventive step) The differences between independent Claim 1 of this pending application and Citation 2 <literature number> are that <explain their technical differences>, and <provide reasons why utilization of technologies involved in Claim 1 cannot be easily accomplished by a person having ordinary skill in the art>. In comparison to Citation 2, therefore, it is Claim 1 that meets the inventive step requirement.

## 3 、 Examples 3: Description of the invention involving green technologies

(1) The invention “Solar Cell” in Claim1 contains “OOO” <technical features> and makes use of “XXX” <technical features> which can promote the efficiency of photovoltaic system. Therefore, the claimed invention in this application involves green technologies.

(2) The invention “Metal-Oxide Compound” in Claim1, as mentioned in paragraph 【OOOO】 of the specification, when applied to LED illumination, can provide high luminous efficiency <energy saving effect>. Therefore, the claimed invention of this application involves green technology.

(3) The invention “hybrid engine” in Claim 1, as mentioned in paragraph 【OOOO】 of the specification, combines a conventional internal combustion engine with an electric propulsion system to effectively reduce carbon dioxide emission <energy saving effect>. Therefore, the claimed invention of this application involves green technology.

(4) The invention “variable-frequency generator,” as mentioned in Claim 1, is the R&D result of the “Offshore Wind Power Project.” The documents provided include a copy of the project’s title page and research abstract.

### C. AEP Process Flow Chart

Grounds for requesting AEP		1. Foreign counterpart approved under substantive examination by foreign patent authority	2. Foreign counterpart whose OA and SR have been issued by EPO, JPO, USPTO, but has not yet been approved	3. Inventions essential to commercial exploitation	4. Inventions involving green technologies		
Foreign patent authority		No restriction	USPTO, JPO, and EPO	None	None		
Time of request		After notification of substantive examination or re-examination					
Documentation	APE request form	✓	✓	✓	Facts of commercial exploitation	✓	Explanation of invention involving green technologies
	Claims of foreign counterpart (with Chinese translation)	✓	Published or approved claims of foreign counterpart (Copy of Notice of Allowance if the patent application has yet to be published)	✓	Claims on which the OA of foreign patent authority is based	✗	✗
	Explanation of differences between the pending claims at TIPO and the claims of foreign counterpart	△	If any	△	If any	✗	✗
	OA (and search report, if any) issued by foreign patent authority	✓	All OA (and SR, if any) during prosecution of foreign counterpart; a summary of the OA and SR in	✓	At least first OA (and SR, if any) of foreign counterpart; a summary of the OA and SR in	✗	✗

		Chinese required (If OA/SR not in English or Chinese)		Chinese required (if OA/SR not in English)				
Reasons for patentability	x	May be provided to expedite examination process	△	Required when an OA indicates the foreign counterpart's failure of compliance with the novelty and/or inventive step requirements	x		x	
A copy of non-patent literature	△	Required when the non-patent literature cited in OA indicates the foreign counterpart's failure of compliance with the novelty and/or inventive step requirements	△	Required when the non-patent literature cited in OA indicates the foreign counterpart's failure of compliance with the novelty and/or inventive step requirements	x		x	
Documents of proof indicating commercial exploitation	x		x		✓		x	
Description of how the invention application is related to Green Tech	x		x		x		✓	How the claim itself is related to Green Tech; or with the content of the description or the figure or other evidence to show the claim is related to Green Tech
AEP request fees	No extra fee required		No extra fee required		NT\$4000 per request			

Notification from TIPO having received all of the required documents	6 months	Not different	With differences	6 months
		6 months	9 months	
The actual pendency may vary depending on the technology field(s) of respective cases.				

Remark: ✓ Required documents ; △ Conditional documents ; ✖ No document required