

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To exempt institutions of higher education and related entities from the fee-shifting provisions.

**IN THE SENATE OF THE UNITED STATES—114th Cong., 1st Sess.**

**S. 1137**

To amend title 35, United States Code, and the Leahy-Smith America Invents Act to make improvements and technical corrections, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. DURBIN (for himself, Mr. VITTER, and Mr. COONS)

Viz:

- 1       On page 31, strike line 9 and insert the following:
- 2       to the prevailing party.
- 3       “(e) INSTITUTIONS OF HIGHER EDUCATION.—
- 4               “(1) IN GENERAL.—Subsections (a) and (b)
- 5       shall not apply to a civil action in which the party
- 6       alleging infringement is—
- 7               “(A) an institution of higher education (as
- 8       defined in section 101(a) of the Higher Edu-
- 9       cation Act of 1965 (20 U.S.C. 1001(a)) or
- 10       under equivalent laws in foreign jurisdictions);

1           “(B) a non-profit technology transfer orga-  
2           nization whose primary purpose is to facilitate  
3           the commercialization of technologies developed  
4           by 1 or more institutions of higher education;  
5           or

6           “(C) a party—

7                   “(i) that has licensed the patent or  
8                   patents that are the subject of the alleged  
9                   infringement from an institution of higher  
10                  education or a non-profit technology trans-  
11                  fer organization; and

12                   “(ii) whose primary business is not  
13                  the assertion and enforcement of patents  
14                  or the licensing resulting therefrom.

15           “(2) EXCEPTIONAL CASES.—In a civil action  
16           described under paragraph (1), the court may in ex-  
17           ceptional cases award reasonable attorney fees to the  
18           prevailing party.”.