

AMENDMENT NO. _____ Calendar No. _____

Purpose: To eliminate USPTO fee diversion.

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. COONS (for
himself, Mr. VITTER, and Mr. DURBIN)

Viz:

1 At the appropriate place, insert the following:

2 **SEC. ____ . ELIMINATION OF USPTO FEE DIVERSION.**

3 (a) FUNDING.—Section 42 of title 35, United States
4 Code, is amended—

5 (1) in subsection (b), by striking “Patent and
6 Trademark Office Appropriation Account” and in-
7 serting “United States Patent and Trademark Of-
8 fice Innovation Promotion Fund”;

9 (2) in subsection (c)—

10 (A) in paragraph (1)—

1 (i) by striking “To the extent” and all
2 that follows through “fees” and inserting
3 “Fees”; and

4 (ii) by striking “shall be collected by
5 and shall, subject to paragraph (2), be
6 available to the Director” and inserting
7 “shall be collected by the Director and
8 shall be available to the Director until ex-
9 pended”;

10 (B) by striking paragraph (2); and

11 (C) by redesignating paragraph (3) as
12 paragraph (2);

13 (3) by redesignating subsections (d) and (e) as
14 subsections (e) and (f), respectively;

15 (4) by inserting after subsection (c) the fol-
16 lowing:

17 “(d) REVOLVING FUND.—

18 “(1) DEFINITIONS.—In this subsection—

19 “(A) the term ‘Fund’ means the United
20 States Patent and Trademark Office Innovation
21 Promotion Fund established under paragraph
22 (2); and

23 “(B) the term ‘Trademark Act of 1946’
24 means the Act entitled ‘An Act to provide for
25 the registration and protection of trademarks

1 used in commerce, to carry out the provisions
2 of certain international conventions, and for
3 other purposes', approved July 5, 1946 (15
4 U.S.C. 1051 et seq.) (commonly referred to as
5 the 'Trademark Act of 1946' or the 'Lanham
6 Act').

7 "(2) ESTABLISHMENT.—There is established in
8 the Treasury a revolving fund to be known as the
9 'United States Patent and Trademark Office Inno-
10 vation Promotion Fund'.

11 "(3) DERIVATION OF RESOURCES.—There shall
12 be deposited into the Fund any fees collected
13 under—

14 "(A) this title; or

15 "(B) the Trademark Act of 1946.

16 "(4) EXPENSES.—Amounts deposited into the
17 Fund under paragraph (3) shall be available, with-
18 out fiscal year limitation, to cover—

19 "(A) all expenses to the extent consistent
20 with the limitation on the use of fees set forth
21 in subsection (c), including all administrative
22 and operating expenses, determined in the dis-
23 cretion of the Director to be ordinary and rea-
24 sonable, incurred by the Director for the contin-
25 ued operation of all services, programs, activi-

1 ties, and duties of the Office relating to patents
2 and trademarks, as such services, programs, ac-
3 tivities, and duties are described under—

4 “(i) this title; and

5 “(ii) the Trademark Act of 1946; and

6 “(B) all expenses incurred pursuant to any
7 obligation, representation, or other commitment
8 of the Office.”;

9 (5) in subsection (e), as redesignated, by strik-
10 ing “The Director” and inserting “REFUNDS.—The
11 Director”; and

12 (6) in subsection (f), as redesignated, by strik-
13 ing “The Secretary” and inserting “REPORT.—The
14 Secretary”.

15 (b) EFFECTIVE DATE; TRANSFER FROM AND TERMI-
16 NATION OF OBSOLETE FUNDS.—

17 (1) EFFECTIVE DATE.—The amendments made
18 by subsection (a) shall take effect on the first day
19 of the first fiscal year that begins on or after the
20 date of enactment of this Act.

21 (2) REMAINING BALANCES.—There shall be de-
22 posited in the Fund, on the effective date described
23 in paragraph (1), any available unobligated balances
24 remaining in the Patent and Trademark Office Ap-
25 propriation Account, and in the Patent and Trade-

1 mark Fee Reserve Fund established under section
2 42(c)(2) of title 35, United States Code, as in effect
3 on the date before the effective date.

4 (3) TERMINATION OF RESERVE FUND.—Upon
5 the payment of all obligated amounts in the Patent
6 and Trademark Fee Reserve Fund under paragraph
7 (2), the Patent and Trademark Fee Reserve Fund
8 shall be terminated.