

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

Purpose: To ensure fairness in post-grant proceedings with respect to the burden of proof.

**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. \_\_\_\_ . FAIRNESS IN POST-GRANT PROCEEDINGS.**

3 (a) INTER PARTES REVIEW.—Section 316(e) of title  
4 35, United States Code, is amended to read as follows:

5 “(e) BURDEN OF PROOF.—In an inter partes review  
6 instituted under this chapter, the petitioner shall have the  
7 burden of proving—

8 “(1) a proposition of unpatentability of a pre-  
9 viously issued claim by clear and convincing evi-  
10 dence; and

1           “(2) a proposition of unpatentability of a pro-  
2           posed amended claim by a preponderance of the evi-  
3           dence.”.

4           (b) POST-GRANT REVIEW.—Section 326(e) of title  
5 35, United States Code, is amended to read as follows:

6           “(e) BURDEN OF PROOF.—In a post-grant review in-  
7           stituted under this chapter, the petitioner shall have the  
8           burden of proving—

9           “(1) a proposition of unpatentability of a pre-  
10          viously issue claim by clear and convincing evidence;  
11          and

12          “(2) a proposition of unpatentability of a pro-  
13          posed amended claim by a preponderance of the evi-  
14          dence.”.