

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

Purpose: To clarify the intent of Congress that motions for fee shifting should not be based on de minimis or non-material litigation positions or conduct.

**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

Viz:

1       On page 23, line 25, add at the end the following:  
2       “In keeping with the intent to strike a balance and to  
3       avoid vexatious or frivolous motions for attorney fees by  
4       prevailing parties, it is further the sense of Congress that  
5       attorney fees should not be awarded based on allegedly  
6       unreasonable litigation positions or actions of non-pre-  
7       vailing parties that are de minimis or are not material to  
8       the consideration or outcome of the litigation.”.