

The Reciprocity of Search

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When discussing search in patent law, everyone considers the problem in terms of producers looking for patentees. But search is reciprocal. In designing a patent system, we can have producers look for patentees, or patentees look for producers. Either will result in the ex ante negotiation that is the goal of a property system. The legal rule that produces the most efficient social outcome depends on identifying the party with the lower search cost. This is analogous to Coase's famous observation about the reciprocity of causation in tort law.

The corollary is that patentees should have the duty of search when they are the lower cost searcher. For example, if there are thousands of patents covering a product, but only one producer, then it is likely to be more efficient to have patentees find the well-known producer to initiate licensing negotiations, rather than have the producer search for each of thousands of unknown patentees.