The Language of Trust and Reciprocity in Patent Markets
A Sociological Analysis of Property Rights
on Messages Resolving Uncertainty in Exchange in Ideas

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ABSTRACT

Firms exchanging technology using the patent system as a trade system (through licensing, cross-licensing, transfer, intermediaries and other mechanisms) face uncertainty that cannot be resolved by information alone; trust in each other’s actions appears to be needed. Information is needed to resolve risk (a probability distribution can be constructed) but uncertainty (where a distribution cannot be made) requires trust in each other’s actions to be resolved and allow for rational decisions to be made regarding price. This article explores, based on in-depth interviews with some of the most active patent licensing and patenting firms in the world, what strategies firms use to create such trust in each other’s actions that may result in reciprocation and exchange in ideas based on the patent system. In the case of patents, the rights and their economic value are particularly risky and uncertain, as new inventions in pipeline that can be held private (as trade secrets) or simply not yet invented affecting the economic value of extant patents and cooperation, creating potential for future hold-up and other non-cooperative behavior, and as the right to sue (enforce) has uncertain outcome. A distinction is also made between uncertainty in state of the art (new technology) and the process of managing this uncertainty using diverse (business) strategies, and treatment of risk based on state of nature and probabilities, hoping to expand on Arrow’s (1962) and other’s work, to inform a better treatment of uncertainty in economic theory.

KEYWORDS: Patent system, patent markets, uncertainty, trust, reciprocity, relational contracts, governance, innovation