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## **An Economic Analysis of Seller and User Liability in Intellectual Property Law**

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**Abstract:**

Suppose that the manufacturer of a component that infringes another's patent sells that component to the manufacturer of a final product; the manufacturer of the final product incorporates the infringing component into the final product and then sells the final product to a wholesaler; the wholesaler sells to a retailer, who sells to a consumer, who takes the product home and uses it. Every party within the chain of distribution is liable for patent infringement, including the consumer, because patent law makes it unlawful not only to manufacture an infringing device, but also to sell or use the device. Trade secret, copyright, and trademark law, on the other hand, impose liability only for certain sales and uses and not others. In this paper, we try to discern whether the patent rule is economically efficient, and if so whether there is any economic logic to the differences between the patent rule and the rules found in trade secret, copyright, and trademark law. We conclude that the efficiency of the patent rule is indeterminate, but that even if the patent rule is efficient there are good reasons for following a different rule in trade secret and copyright law. The trademark rule, by contrast, is somewhat difficult to square with the patent rule. We also speculate on some ways in which the internet may be pushing copyright and

trademark law in the direction of the patent rule in certain respects.

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