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New York Times (1857-Current file); Oct 23, 1968; ProQuest Historical Newspapers The New York Times
pg. 59

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WASHINGTON, Oct. 22—The Patent Office is not going to grant patents for computer programs unless they're embodied in a mechanical device.

The policy was spelled out in "guidelines" published in today's issue of the weekly Patent Office Official Gazette. It was elaborated upon by Edward J. Brenner, Commissioner of Patents, in a speech today at a George Washington University conference.

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The protection of computer programs, or software, is of prime interest to the growing industry that produces them. A trade estimate is that there are 425 software concerns in the country, as distinct from the concerns that make the machines, or hardware, and the hundreds of data centers that sell computer time.

A program, or piece of software, is a set of instructions for a general-purpose computer, a data processor or a machine that exerts automatic control. It may be printed on paper, recorded on magnetic tape, punched on cards or incorporated in a set of cams, rods and switches—and in that case it isn't really soft.

The guidelines say flatly that computer programs

Edward J. Brenner

themselves shall not be patentable. Programs represent intellectual work, and "mental processes may not be patented although they may be of enormous importance."

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The Patent Office has been following this general policy, and has not knowingly patented software as such. "Of course," said one official, "now and then we make a mistake."

Mr. Brenner said that although the new softwear industry wanted protection, the hardware manufacturers were rather cool to the idea, fearing that it might limit the use of their computers.

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A spokesman for the International Business Machines Corporation said: "The primary reason for our concern in the patenting question is that our customers would face many problems if programs were patentable. One of these problems would be not knowing whether the program they are writing are free from infringements from valid patents."

The commissioner pointed out that the software industry is forced today to rely on the common law of trade secrets and general ethics of competition. An alternate is the copyrighting of programs, but there are objections to both methods of protection.

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Mr. Brenner said the Copyright Office has since 1964 permitted programs to be registered under certain conditions. He added that the status of such copyrighted works, however, is still uncertain, and the industry has been reluctant to rely on, or even utilize, this form of protection.

The agency has begun an over-all study that may form the basis for future legislation offering protection of some sort for computer programs.