Computer Programs Are Held Patentable

An Appellate Court Decides Case Concerning Software

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WASHINGTON, Aug. 15—Computer programs are patentable under a decision yesterday of the United States Court of Customs and Patent Appeals, in the controversial computer software case, several lawyers said today after studying the decision, which supercedes one handed down last November. At the request of the Patent Office, a rehearing was held in March.

A spokesman for the growing software segment of the computer industry, which deals in the programs, or instructions for the hardware, hailed the new decision as a magna carta.

Morton C. Jacobs of Philadelphia, counsel for Applied Data Research, Inc., and the Association of Independent Software Companies, said in a telephone interview:

"As I read the decision, the court has clearly stated that machines or apparatus based on or produced by computer programs are patentable subject matter and has also stated that machine processes based on computer programs are patentable subject matter.

Inventors Protected

"On this basis those making inventions in the technical area of software can obtain patent protection in the same way as those who have been working in hardware or any other phase of computers."

The Patent Office declined specific comment in the absence of the commissioner, William E. Schuyler Jr., who is attending a Bar Association meeting in Mexico City. Edwin L. Reynolds, first assistant commissioner, said today that the matter would be put before Mr. Schuyler when he returned early next week.

Patent Office policy has been to grant patents only on programs embodied in equipment, including gears, cams and electric circuits, but not on those embodied merely in punched cards or magnetic tape. If the card and tape forms remain unpatentable under the decision, the machine processes they control can be protected.

The case, which arose from an appeal by the Mobil Oil Corporation from a decision of the Patent Office Board of Appeals, is complex. The court did not, in so many words, rule that computer programs were or were not patentable, but addressed itself to the claims, for definitions of the invention, in the application at issue.

Comment Made

"In one sense," the court said, "a general-purpose digital computer may be regarded as but a storeroom of parts and/or electrical components. But once a program has been introduced, the general - purpose digital computer becomes a special-purpose digital computer (i.e., a specific electrical circuit with or without electro mechanical components) which, along with the process by which it operates, may be patented . . ."

Mr. Jacobs put it in another way. "You build a special-purpurpose computer by placing it under the control of a computer program," he said. "A user having a single general-purpose computer and a thousand programs in his library has 1,000 special-process computers."

I.B.M. Backs Office

The International Business Machines Corporation, the giant hardware maker, intervened in the case as a friend of the court favoring the patent office position. An I.B.M. spokesman said today that, inasmuch as there might be future proceedings, the company would have no statement on yesterday's decision.

Other than patents, the fast-growing software industry has no adequate protection for its programs, which it values at billions of dollars. There are disadvantages in copywriting them or treating them as trade secrets, and study has been given to other possible forms of protection.