HIGH COURT DENIES COMPUTER PATENT FOR PROGRAMING

6-0 Ruling Is a Step Toward Ending Multimillion-Dollar Industry Controversy

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WASHINGTON, Nov. 20—The Supreme Court ruled today that computer programing consisted basically of ideas and could not be patented.

The Court stopped short of saying that every program for servicing a computer should be denied a patent as the law now stands but urged that any move toward such protection should be studied and authorized by Congress. The vote was 6 to 0, with three Justices — Potter Stewart, Harry A. Blackmun and Lewis F. Powell—not participating in the decision and offering no explanation.

Far-Reaching Dispute

Directly involved in the case was a far-reaching dispute between the two branches of the computer industry: the giant "hardware" companies, led by the International Business Machines Corporation, and the smaller providers of "software."

Hardware is the machines, central processors, input-output devices and other electronic equipment used to process information.

Software, broadly considered, is everything that is not hardware, but in its narrower sense it is the totality of programs and routines used to extend the capabilities of the hardware.

A program is a set of instructions in machine-readable electronic language that enables the computer to solve a particular problem.

Today's ruling went a long way toward settling a multimillion-dollar controversy in the industry.

New Rules of Evidence

In another action today, the Court issued a 45-page package of new rules of evidence to be used by Federal courts in civil and criminal trials. The rules will go into effect July 1 unless they are vetoed by Congress before then. They constitute the first set of nationally uniform evidence standards.

A formidable array of hardware manufacturers filed extensive arguments, as friends of the Court, in opposition to granting the particular patent at issue, contending such action would impede development of future technology.

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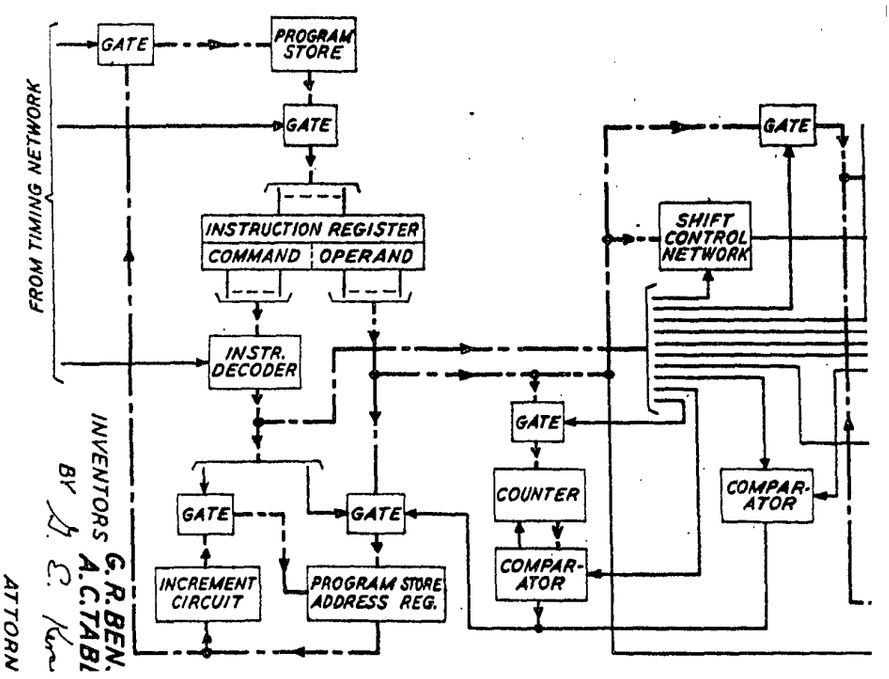

Section of a diagram of an application for a patent for programing digital computers. Supreme Court denied the application on the ground that it was like patenting an idea.

Computer Programing Unpatentable

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Association of Data Processing Service Organizations, representing the software companies, maintained that patents were needed to protect their industry, and charged the equipment manufacturers with trying to stifle competition.

The case before the Court involved an attempt by two employes of the Bell Telephone Laboratories, Inc., Gary R. Benson and Arthur C.Tabbot, to obtain a patent on a method of converting one kind of numerical code used by digital computers into another code.

During nine years of litigation, the Patent Office, supported later by its board of appeals, said that the program developed by the two men was not a "process" subject to patent but a series of mathematical calculations or mental steps.

But the Court of Customs and Patent Appeals disagreed, saying that the Bell Laboratories program was a process, to be implemented by machines, and ordering a patent issued. The Federal Government, through the Solicitor General, opposed the issuance of patents for computer programs.

Patent Unit Opposed

"It is conceded that one may not patent an idea," Justice William O. Douglas wrote in the unanimous opinion. "But in practical effect," Justice Douglas continued, "that would be the result if the formula were patented in this case."

In 1966, the Justice noted, the President's Commission on the Patent System opposed patents for programs and criticized attempts to obtain them by disguising a program as "a process or a machine or components thereof programed in a given manner."

The financial stakes in the industry are high. In its brief, the Business Equipment Manufacturers Association, representing hardware producers, estimated that computer systems worth $43-billion would almost double in value by 1975, while the software sellers would gross $15-billion a year within the next five years.

"If these programs are to be patentable," Justice Douglas concluded, "considerable problems are raised which only committees of Congress can manage, for broad powers of investigation are needed, including hearings which canvass the wide variety of views which those operating in this field entertain."

Friend of the Court briefs were filed by 16 interested groups in the patent case, an unusually high number.

Going back to cases involving the telephone and the telegraph, Mr. Douglas observed:

"Phenomena of nature, though just dicovered, mental processes, abstract intellectual concepts are not patentable, as they are the basic tools of scientific and technological work."

Among the computer companies represented by the manufacturers' association were I.B.M., Honeywell, Inc., the National Cash Register Company, the Control Data Corporation, the Sperry Rand Corporation and the Xerox Corporation.

TRW Official Comments

Dr. Simon Ramo, vice chairman of TRW, Inc., a software company, said in a comment on the Supreme Court decision:

"I'm not at all surprised. The formula seems to be that you can patent something that you can hold in your hand but not something that is in your head.