

COMPUTER PATENT BACKED BY COURT

U.S. Will Request Review of Decision on 'Software'

Special to The New York Times

WASHINGTON, Nov. 22—In what the chief judge called a landmark case, the United States Court of Customs and Patent Appeals ruled this week that computer programs, or "software," are patentable.

Edward J. Brenner, Commissioner of Patents, said today that if the decision stood it would require substantial revision of the recently published Patent Office guidelines, "which take a substantially opposite approach in holding that, generally speaking, computer programs are not patentable subject matter."

The Patent Office is planning to file a petition for reconsideration by the court. Mr. Brenner indicated that any decision on an appeal to the United States Supreme Court would await the results of the petition.

In interpreting the decision that, generally speaking, computer patents should be issued, Mr. Brenner pointed out that they must meet the other requirements for patentability.

The decision, written by

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Judge Arthur M. Smith, holds that "patent protection for a process disclosed as being a sequence or combination of steps, capable of performance without human intervention and directed to an industrial technology—a 'useful art' within the intendment of the Constitution—is not precluded by the mere fact that the process could alternatively be carried out by mental steps."

The Constitution referred to useful arts in authorizing Congress to set up a patent system.

The case was an appeal brought by the Mobil Oil Company from rejection by the Patent Office board of appeals of an application for a patent on an analog computer filed by Dr. Charles D. Prater and Dr. James Wei, engineers for the company at Princeton, N. J.

Rejection Reversed

The court reversed the board's rejection of all the claims (definitions of the invention) for processes and apparatus.

A program is a set of instructions for a computer, and may be recorded on tape, punched on cards, or incorporated in equipment.

Judge Smith died suddenly on Wednesday, the day the decision was issued. Chief Judge Eugene Worley, in a separate opinion, said that, although Judge Smith had been strongly advised by his doctors to restrict his activities, he continued to rewrite and revise an opinion dealing with one of the most technical matters ever faced by the court. On Nov. 8, the members necessary for a majority joined him in the opening.