

# Fighter for Computer-Program Patents

By WILLIAM D. SMITH

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pg. F1

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The New York Times  
Richard C. Jones, president of Applied Data Research, during a recent interview. Mr. Jones is a crusader for the patenting of computer programs.

Richard C. Jones, president of Applied Data Research, Inc., is a very unlikely crusader.

The short, 35-year-old head of one of the nation's leading software companies, is a low-keyed executive who is considered a very amiable man by friends and competitors alike.

Yet when Dick Jones picks up an axe to grind, he does so with both hands.

Mr. Jones is presently leading the defense of the concept that computer programs are patentable.

It is a question that is one of the hottest in the computer industry and one that the United States Patent Office has unhappily juggled for several years.

### The Instructions

Computer programs are the instructions that enable the data processing machines to perform the desired tasks. The programs, which are encoded in an electronic language that the machine can understand, are fed into the computers by punch cards, magnetic or paper tape, or through telephone lines.

Computer software is the sum total of programs, systems analysis and human intelligence that goes into making the basically moronic machines capable of accomplishing such varied jobs as corporate payrolls and Apollo moon shots.

"There is no question in my mind that computer programs are patentable. They meet every requirement set out in the United States patent laws," Mr. Jones commented.

Mr. Jones is supported by most software companies and

Bell Laboratories. In addition, a proposal to exclude computer programs from patent protection, included in a bill before Congress was opposed by the American Patent Law Association, the Electronic Industries Association, the American Chemical Society and the National Small Business Association.

Opposed to the proposition that computer programs are patentable are most computer hardware manufacturers and the Patent Office.

### Disputed Patent

The debate came to a head this year. In April, Martin A. Goetz, a vice president of Applied Data Research, was granted a patent that appeared to most people to cover a computer program.

The Patent Office quickly denied that the Goetz patent involved a program. Rather, it involved a combination of equipment and program, the office held.

In October, the office issued a guideline on the subject stating that it was not going to grant patents for programs unless they were embodied in a mechanical device. The guideline stated flatly that computer programs themselves should not be patentable. It said that programs represent mental work and "mental processes may not be patented although they may be of enormous importance."

In November, the United States Court of Customs and Patent Appeals ruled that indeed computer programs and software were patentable.

The Patent Office in December filed a petition for a

Continued on Page 19, Col. 3

# Computer Programs: Are They Patentable?

Continued From Page 1.

rehearing on the court's decision.

And there it stands except for Mr. Jones, who is taking the battle to the "enemy."

The Association of Independent Software Companies, a 10-company trade group headed by Mr. Jones, has issued a position paper on the subject.

The paper said, "There is no question that computer programs represent an extremely valuable body of industrial property. The adequate protection of this property is vital to the business interests of the members of the Association of Independent Software Companies. The Association should recognize that the Patent Office is discriminating against inventors who chose a program as the preferred embodiment in favor of a hardware embodiment for the same inventive concepts."

The paper contends that the problem is basically an economic one. "Should software manufacturers have the right to compete with hardware manufacturers? Does software invention deserve protection as adequate as hardware invention?"

## An Example

The paper poses a hypothetical example: "Software manufacturer 'A' decides he can build a Cobol compiler for the International Business Machines 360 computer that will be 25 per cent more efficient. 'A' proceeds to build this product, which employs some inventive concepts, and expends one million dollars. The product performs as originally estimated. 'A' advertises in the trade publications that it offers a Cobol compiler which is 25 per cent more efficient than I.B.M.'s for only \$5,000. 'A' distributes literature and user manuals to prospective clients and runs demonstrations. He even installs a few systems.

"However, as word gets out about this new system, the users put pressure on I.B.M. to produce an improved system. I.B.M. 'reluctantly' agrees to do this. In building the new version some of 'A's' principles are employed, which were disclosed in the promotion of 'A's' product. Since patent protection was not available to 'A,' he had no legal position to protect his investment in the inventive concepts that he developed.

"'A' lost a lot of money."

## A Similar Case

The paper charges that a very similar sequence of events occurred when the "Disitek Corporation introduced a Fortran compiler.

"Software companies cannot base the existence of their business on the philanthropy of the computer manufacturers," the paper commented.

Proponents of programing patentability contend that it would improve the programing art by encouraging public disclosure of techniques. They also point out that it would encourage the develop-

ment of software houses and discourage the production of standard-package programs by computer manufacturers. These packaged programs, according to even the most kindly critics, have been a bit less than satisfactory.

Hardware companies have traditionally supplied software to customers with the purchases of equipment at no extra official cost. The cost is built into the purchase price, according to the software companies.

It is another goal of Mr. Jones and the software companies association to obtain separate pricing of hardware and software.

"If the manufacturers put any price no matter how small on program support, the customer will have to evaluate what he is getting. Let the customer evaluate what the manufacturers offer and what we offer, that's all we ask."

Mr. Jones contends that the only person the "one price" hardware and software helps is I.B.M. The other manufacturers don't have as much software capability, so I.B.M. has built into its pricing a distinct advantage.

If Mr. Jones's actions indicate that he enjoys grinding his axe against I.B.M., this is probably the case. He intends to offer his aid to the Control Data Corporation in its anti-trust suit against the computer-industry giant.