

# PATENTS OFFICE REVERSING STAND

## The Guidelines on Computer Programing Rescinded

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WASHINGTON, Oct. 8 — In the light of a recent court decision, the Patent Office is receding from its firm stand against patenting software, or computer programs.

William E. Schuyler Jr., Commissioner of Patents, announced today the rescission of "guidelines" published by the Patent Office a year ago, which held that computer programs as such were not patentable.

In remarks before the computers-in-law Institute of George Washington University here today Mr. Schuyler said, "We now will consider patent applications for computer programs on the basis of the merits of the specific inventions sought to be protected rather than refuse consideration for reasons such as those discarded by the court...."

### Requirements of Law

His reference was to a decision of the Court of Customs and Patent Appeals issued Aug. 14 on an appeal by the Patent Office from an earlier decision in what one judge called a landmark case. This involved an invention by Drs. Charles D. Prater and James Wei of Mobil Oil Corporation.

"Even though the law of patentability of computer programs must develop on a case-by-case basis," Mr. Schuyler continued, "I believe you will agree that many computer programs will be unpatentable because they are obvious to a skilled programmer."

To be patentable under the law, an invention must not be obvious to a person "having ordinary skill in the art."

Citing criticisms of copy-

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writing as an alternative means of protecting software, or sets of instructions for computers. Mr. Schuyler urged adoption of some method other than patenting or copyrighting.

Copyrighted programs are "published." Mr. Schuyler suggested a registration system in which programs would be kept secret during the period of protection.

The commissioner urged cooperation with a committee now being organized by the National Council of Patent Law Associations to study software protection and to draft any necessary legislation.

The committee is to include representatives of the bar, the Copyright Office, the Patent Office, the software industry, the equipment manufacturers and the users of software. Mr. Schuyler promised the full cooperation of the Department of Commerce and the Patent Office.

Mr. Schuyler was a luncheon speaker. At a morning session, Virgil Woodcock, counsel for Mobil Oil in the software case, said the court decision should give great comfort to those who are seeking to obtain patent protection on new and nonobvious operations of digital computers.

The guidelines were issued in October, 1968, during the term of Mr. Schuyler's predecessor, Edward J. Brenner. They aroused opposition from makers of software, the explosively expanding section of the industry