Court deadlock favors Borland

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Copyright case decision denies Lotus claim

Staff and wire reports

WASHINGTON — Handing a victory to Borland International Inc., the Supreme Court Tuesday said it could reach no decision in a case that had been billed as its first opportunity to consider what elements of computer software can be protected by copyright.

The court said it was divided 4-4 on Lotus Development Corp.'s claim that Scotts Valley-based Borland had illegally taken parts of the Lotus 1-2-3 spreadsheet for one of its own products. By its split vote, the justices upheld a lower court ruling against Lotus.

The ninth justice, John Paul Stevens, was stranded at his home in Florida when oral arguments were heard Jan. 8, the day a major blizzard hit Washington. But Stevens had previously removed himself from the case.

"We are extremely pleased to close the final chapter of this case," said Gary Wetsel, president and CEO of Borland International. "This victory is a win for software developers and computer users worldwide. This has been a long, hard fought case and we appreciate the support we have received from user groups worldwide, various software industry organizations, and other experts in the field of software development and copyright protection."

Specialists in copyright law had been hoping the Supreme Court would straighten out a decade of conflicting rulings on software by lower courts, and many said they were disappointed by the two-sentence ruling.

"This is like a World Cup soccer game that ends in a tie — very high stakes, very high visibility and a very high desire for an outcome," said Lee Gesmer, a computer law specialist with the Boston law firm Lucash Gesmer & Updegrove.

"The industry had been waiting for a case like this to reach the Supreme Court for years," Gesmer said, "and they had declined a number of cases where they could weigh in on these issues."

The court issued no opinions in the case and did not say how each justice voted, which lawyers said was common in 4-4 ties. Similarly, a court spokesman said Stevens never announced the reason for disqualifying himself.

Lotus, based in Cambridge, Mass., had filed the lawsuit against California-based Borland in 1990 for taking a system of menus and commands from the 1-2-3 spreadsheet and incorporating them into Borland's Quattro and Quattro Pro spreadsheets.

Lotus argued that the command menus were a creative product and deserved the same copyright protection given to musical scores and books. Lotus won its case in 1993 before US District Judge Robert E. Keeton of Boston.

But the 1st US Circuit Court of Appeals threw out the case last March. The appeals court agreed with Borland that the commands were more like the order

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of pedals in a car or of buttons on a tape deck, which cannot be copyrighted.

If it had won, Lotus had said it might seek more than $100 million in damages.

During last week's oral argument, Lotus attorney Henry B. Gutman told the justices the software's command menu was a literary work entitled to the same protection given to musical scores or works of choreography.

But Borland's lawyer, Gary L. Reback, said the words in the menu were more like basic English grammar, which cannot be copyrighted in the same way as written English compositions.

Reback said Lotus should have to meet the higher standard required for patent protection.

The case is Lotus Development vs. Borland International, 94-2003.

Borland sold its Quattro Pro spreadsheet to Novell Inc. in March 1994.

Current Borland products include software development tools such as Delphi, Delphi Client/Server, Borland C++, Visual dBASE, Paradox and InterBase.

The high court's action means the 1st Circuit's decision is a precedent only in that jurisdiction, which includes Massachusetts, Maine, New Hampshire, Rhode Island and Puerto Rico. Courts in other jurisdictions may cite the 1st Circuit decision but are not bound by it.

Lotus, now a unit of International Business Machines Corp., said in a written statement that it was "clearly disappointed" by the ruling. "We filed suit because we believed our position was consistent with federal copyright law and prior case law," the company said. "It is disappointing that the Supreme Court did not provide more guidance to the industry on these critical copyright issues."