

# The Burger Court Opinion Writing Database

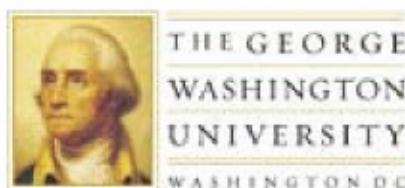
*Gottschalk v. Benson*

409 U.S. 63 (1972)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543

January 13, 1972

CHAMBERS OF  
THE CHIEF JUSTICE

No. 71-485 -- Gottschalk v. Benson

MEMORANDUM TO THE CONFERENCE:

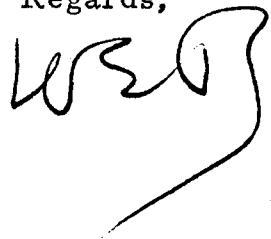
This case presents the issue whether computer programs are patentable under either the patent statute or the Constitution. That issue may conceivably be certworthy, but one of my law clerks who has had extensive experience in the computer field expresses the view that both claims of the patent application here involved appear to him to describe computer procedures that fail, as a matter of mathematical reality, to accomplish their purported purpose.

Instead of a denial of cert on the basis of his mathematical conclusion, however, he has suggested that we call for further views of the parties on the questions (a) whether the patent claims are indeed "flawed" and (b) if so, what effect, if any, that should have on our decision whether to grant or deny certiorari in the case.

Attached hereto is the suggestion of Mr. Elmore for the language that, in his judgment, would accomplish the purpose of flushing out the real issues.

If the Conference should decide that such a course is appropriate, these questions could be submitted to the parties by the Clerk.

Regards,

A handwritten signature in black ink, appearing to read "W. S. B." followed by a long, sweeping flourish.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

January 14, 1972

Dear Chief Justice:

In No. 71-485 - Gottschalk v.

Benson, the proposed questions to be  
submitted to the parties in this case  
meet with my approval.

W. O. D.

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The Chief Justice

cc: Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 19, 1972

Re: No. 71-485 - Gottschalk v. Benson

Dear Chief:

I have no objection to your proposed  
questions.

Sincerely,

  
T.M.

The Chief Justice

cc: The Conference