

Patent infringement trial begins next Monday

The trial of Tektronix' oscilloscope patent infringement suit against the United States Government opens Monday, February 1, in the US Court of Claims in Washington, D.C.

Tek's claim against the US was filed March 2, 1961 in the US Court of Claims in which we charged the Government of encouraging the copy of our patented instruments on military contracts. Subsequently three suppliers, Hickok Electrical Instrument Co., Jetronics Industries and LaVoie Laboratories were brought into the case as third party defendants.

Robert F. Conrad of Washington, D.C. is Tek's attorney and

will handle our claim at the trial. The Department of Justice will represent the US Government. The third-party defendants, Hickok, Jetronics and LaVoie, will also be represented at the trial by their attorneys.

Teks attending the trial will be Jack Day, Patents & Licensing; Bill Webber, vice-president; and Jim Knapton, Instrument Engineering Digital Systems. Steve Blore, our patent attorney in Portland, will also attend.

Vice-president Bill Webber will be Tek's first witness, and Engineer Jim Knapton will be Tek's major witness. Tek's second witness will be Frank Sawonik, vice-president of Hickok. Tek has also

called witnesses from LaVoie Laboratories and Jetronics.

"We look forward with great interest to Sawonik's answers to direct questions about Hickok's alleged copying of our instruments," Bill Webber said.

Early in the trial, Tek will show the film, "The Oscilloscope Draws a Graph", to be sure that everyone involved has a better understanding of what the oscilloscope is and does.

The patent trial could last as long as three or four weeks. The US Court of Claims has set aside the entire month of February if needed for the trial.

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Patent trial starts Monday in Washington, D.C.

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Jack Day, who left Wednesday for Washington, will also send information daily to Beaverton during the trial.

Tek's main objectives in the suit are three fold: (1) to call attention to the highly questionable ethics apparent in some areas of government procurement which encourage and condone copying of privately financed designs; (2) to illustrate the government often isn't getting the best value for its procurement dollar by only considering the item with the cheapest initial cost; and, (3) discourage the infringement of patents.

For background of Tek's patent suit, see Tekweek, June 12, 1964.

Next week's trial will not include discussion of the US Government's counter-claim against Tek, which is a separate issue. The Government claims that Tek has used government patents in producing our oscilloscopes.

Tek filed a motion for summary judgment last fall stating that the Government had no right to file the counter-claim. An answer



TEK'S PATENT TRIAL on February 1 was discussed this week by Attorney Bob Conrad (right) who will handle Tek's claim against the US Government, and Jim Castles, Tektronix general counsel.

to this motion was filed by the Department of Justice this week.

Mr. Conrad's office has been working two months on a reply to what was the government's expected answer. They reported

that the government's answer brought no surprises so our reply can readily be filed within the 15-day time limit. The full Court of Claims will then hold a hearing on our motion, probably before their summer recess.

Teks depart for Washington, D.C. as trial opens in Court of Claims



Tek cartons shipped to Patent trial

Trial of Tek's oscilloscope patent infringement suit against the US Government opened last Monday in the US Court of Claims in Washington, D.C.

Bill Webber, vice-president, and Jim Knapton, Instrument Engineering Digital Systems, left last weekend for the trial. Jack Day, Patents & Licensing, and Tek's attorney, Bob Conrad, had left earlier in the week.

Also departing last week for Washington from Tek's warehouse

were 39 cartons containing papers and documents for the patent trial.

Bill was scheduled to be Tektronix' first witness, and Jim was to be Tek's major witness.

Bill told Tekweek before he left that the trial could last as long as three or four weeks. Jack Day was scheduled to send information to Beaverton on the trial's progress. In addition, Bill will report on the trial when he returns home in mid-February. A report will be published in Tekweek at that time.

Government counterclaim dismissed last week by US Court of Claims

The US government's counterclaim that alleged the infringement of two government-owned patents by Tektronix, Inc. was dismissed last week in Washington, D.C. by the US Court of Claims.

The court, in dismissing the action, granted Tek's motion that contested the government's right to sue a private citizen for infringement of government-owned patents.

"Needless to say, we are very gratified at the decision," Tektronix president Howard Vollum said. "However, we were fully prepared—had it been necessary—to refute the government's claim by proving that its patents in question were not valid, nor were they infringed by Tektronix."

The government filed its counterclaim in November 1962, nearly two years after Tek brought suit against the government for infringement by three government contractors of seven Tek patents relating to oscilloscopes.

The company decided to test the government's right to bring such a counterclaim, and filed its motion for summary judgment in August 1964.

The court, in granting the motion last week, remanded the original case to the trial commissioner for trial upon the issues presented. The case is scheduled to resume November 15.

The company, in filing its motion for summary judgment, in essence argued that the government throughout its long history of patent administration has never published procedures for licensing its patents, and therefore has granted implied right for their free use.

The counterclaim against Tek marked the first time in US history that the government had sued for infringement of its patents.

Tek to continue its case when patent trial resumes

Tektronix, Inc. will continue presenting its case when its patent infringement suit against the US government resumes in Washington, D.C. November 15 before the trial commissioner in the US Court of Claims.

The case, which is expected to last at least another two weeks, will go to the Court itself for a decision following the trial commissioner's recommendation.

Tektronix has sued the government for allegedly infringing eight Tek-owned patents. The government named three third-party defendants—Hickok Electrical Instrument Co., Lavoie Laboratories, Inc., and Jetronic Industries, Inc.

The patent trial, which got underway February 1, recessed two weeks later when Richard Egan, the attorney for the Hickok firm, was hospitalized for a bleeding ulcer.

Tektronix engineer Jim Knapton, our expert witness, is expected to go on the stand again for cross examination when the case resumes before Commissioner Donald Lane.

Before the recess, Jim explained the circuitry in Tek's patents and showed how they were infringed by the third-party defendants. Attorneys for Jetronic and Lavoie cross-examined Jim for two and one-half days.

Other witnesses in our case have been Bill Webber, Tektronix vice-president; Richard Laufer, Lavoie treasurer; and Frank Sawonik, Hickok vice-president. Bill outlined Tek's history and gave other information about the company pertinent to the case.

Jack Day of Patents and Licensing, in explaining our position, said Tek contends the United States, in obtaining equipment from the third-party defendants, infringed patents which we own.

The government, on the other hand, contends the patents were invalid and were not infringed, he said.

The US Court of Claims earlier this month dismissed the government's counterclaim that alleged the infringement of two government-owned patents by Tektronix.

Jack, commenting on the decision, said it is a decision "which will be referred to in the patent lawbooks for years to come".

The Court, in dismissing the action, granted Tek's motion that contested the government's right to sue a private citizen for infringement of government-owned patents. It marked the first time in US history that the government had sued for infringement of its patents.

Tekweek will publish reports on the patent trial when it resumes next month to inform employees.

Patent trial resumes on Monday

The patent infringement suit, brought against the US government by Tektronix, Inc., resumes Monday before Trial Commissioner Donald Lane in the US Court of Claims in Washington, D.C.

Our expert witness, Tek engineer Jim Knapton, left for Washington, D.C. last Sunday. Also to leave for the Nation's Capitol at the same time were Steve Blore, Tek's patent attorney, and Jack Day of Patents and Licensing.

The case, which is expected to last at least another two weeks, will go to the Court itself for a decision following Commissioner Lane's Finding of Facts and Recommendation.

Tektronix attorneys will continue pre-

senting the company's case Monday in the proceeding that names the government as the defendant and three firms—Hickok Electrical Instrument Co., Lavoie Laboratories, Inc. and Jetric Industries, Inc.—as third-party defendants.

The patent trial, which began last February 1, recessed two weeks later when the attorney for one of the third-party defendants was hospitalized for a bleeding ulcer.

Tektronix contends the United States, in obtaining equipment from the third-party defendants, infringed patents which we own. The government, on the other hand, maintains the patents are invalid and not infringed.

In preparation for the trial, six cartons of documents and a carton of equipment were sent to Washington, D.C. last week and will join a large amount of material which has been in storage there since February.

Patent trial resumes in Washington

Tektronix' patent infringement suit against the US government, which resumed in Washington, D.C. Monday following a nine-month recess, continued today before Trial Commissioner Donald Lane in the US Court of Claims.

Our expert witness, Tek engineer Jim Knapton, was being cross-examined by Richard Egan, the attorney for one of the third-party defendants, Hickok Electrical Instrument Co., shortly after the trial got under way. The two other third-party defendants, named by the government, are Lavoie Laboratories, Inc. and Jetronic Industries, Inc.

Jack Day of Patents and Licensing, in Washington, D.C. for the trial which is expected to last for at least another week, said most of the questions early this week were about technical aspects of Tektronix' oscilloscopes.

The case will go to the Court itself for a decision following Commissioner Lane's Finding of Facts and Recommendation.

Tektronix contends the United States, in obtaining equipment from the third-party defendants, infringed eight patents which we own. The government, on the other hand, maintains the patents are invalid and not infringed.

Patent trial recessed for one week

Tektronix' patent infringement suit against the US government will resume again Monday before Commissioner Donald Lane in the US Court of Claims in Washington, D.C. following a one week recess.

The trial was recessed for a week last Saturday because of other commitments by one of the attorneys involved in the case.

Jack Day of Patents and Licensing, in

Beaverton during the recess this week, said the case will last another week; and then if not completed, will recess until the week of February 28. He reported good progress in the case.

Tektronix contends the United States, in obtaining equipment from the third-party defendants—Hickok Electrical Instrument Co., Lavoie Laboratories, Inc. and Jetronic Industries, Inc.—infringed eight patents which we own.

Patent trial resumes in Washington D.C. for final week

Tektronix' patent infringement suit against the US government will get under way again Monday before Commissioner Donald Lane in the US Court of Claims in Washington, D.C.

The case, which names three third-party defendants—Hickok Electrical Instrument Co., Lavoie Laboratories, Inc. and Jetronic Industries, Inc., began one year ago and has been recessed three times. The last recess began December 17.

Jack Day of Patents and Licensing said Tektronix will present its rebuttal to the

testimony given earlier during the trial by the third-party defendants. The Commissioner has allowed one week for the remainder of the trial and Jack said it is not expected to exceed the time allowed.

The case will go to the Court itself for a decision following Commissioner Lane's Findings of Fact and Recommendation. The decision, however, is not expected until late this year.

Tektronix' Washington attorney, Bob Conrad, was in Beaverton earlier this month for meetings to develop information

for the rebuttal. He met with Jack, Jim Knapton, our expert witness, and Steve Blore, our Portland patent attorney. Jim, Steve and Jack left for Washington earlier this week.

Tektronix contends the United States, in obtaining equipment from the third-party defendants, infringed eight patents which we own. The third-party defendants, in presenting their defense, were trying to prove that our patents are not valid, but if found valid, have not been infringed by them.

Patent trial ended last Friday

Tektronix' patent infringement suit against the US government is expected to go before the judges of the US Court of Claims for a decision in about a year, Jack Day of Patents and Licensing said after returning from Washington, D.C. where the trial was concluded last Friday.

Jack said US Court of Claims Commissioner Donald Lane, who conducted the trial, will submit his Recommendation, Findings of Fact and Findings of Law to the judges. Before that, however, the transcript of the trial must be reviewed and a certified copy submitted to the Commissioner. The parties involved

must then submit Proposed Findings of Fact to him.

Tektronix contended that the United States, in obtaining equipment from three third-party defendants, infringed eight company-owned patents. The third-party defendants—Hickok Electrical Instrument Co., Lavoie Laboratories, Inc., and Jetronic Industries, Inc.—tried to prove that Tektronix' patents were not valid, but even if valid, had not been infringed by them.

Involved in the case are three patents by Dick Ropiequet and one by John Kobbe covering sweep circuits, a patent by John

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Patent trial ended Friday; Decision scheduled next year

covering an unblanking circuit, a patent by Dick covering an automatic triggering circuit, and two patents by John and Bill Polits, one covering a resistive wire probe and the other a distributed amplifier termination.

Nine witnesses were called during the course of the trial, four of them by Tektronix: Bill Webber, Tektronix vice-president; Richard Laufer, treasurer of Lavoie Laboratories, Inc.; Frank Sawonik, vice-president in charge of government contracts, Hickok Electrical Instrument Co.; and Tek Engineer Jim Knapton, our expert witness.

Bill gave business and historical information about Tektronix and the contracts held by the third-party defendants which

led to the alleged infringements. Jim dealt with technical matters relating to Tek's patents and circuits, and the circuits of instruments built by the third-party defendants which constituted the alleged infringements. Mr. Laufer and Mr. Sawonik testified concerning government contracts their respective companies held in connection with these instruments.

Tektronix introduced more than 175 pieces of evidence including four oscilloscopes, Tek Type 535 and 545A, Lavoie LA265, and Hickok 1805A; three plug-in units, two from Tektronix and the other from Hickok; and two Tek probes.

The trial began more than a year ago and was recessed on three different occasions before adjourning Friday.

Commissioner rules US government infringed Tektronix patents

Tektronix moved one step closer to winning its patent infringement case against the US government as Commissioner Davis ruled last week that all eight of the company's patent claims were valid and had been infringed.

The Commissioner's findings that Tektronix is entitled to recover reasonable and entire compensation for unauthorized use by the US government of the patented inventions now goes before the US Court of Claims for adoption.

Tektronix filed suit on March 2, 1961 charging that the US government encouraged the copying of our patented instruments on military contracts. Subsequently three suppliers, Hickok Electrical Instrument Co., Jetric Industries, Inc., and Lavoie Laboratories, Inc., were brought into the case as third-party defendants.

At the heart of the issue were eight patented circuits in Tektronix Types 535 and 545 oscilloscopes, two relating to vertical circuits and six relating to horizontal circuits. The defendants did not challenge the validity or infringement of the patents relating to vertical circuits.

In November 1962, the US government filed a counterclaim that Tektronix had infringed two government-owned patents, the first time in US history that the government had sued for infringement of its patents.

Tektronix decided to test the government's right to bring such a counterclaim and filed for a motion of summary judgment in August 1964, arguing that the government, throughout its history of patent administration, has never published procedures for licensing its patents

and therefore has granted implied right for their free use.

In October 1965, the US Court of Claims dismissed the government's counterclaim.

A series of pre-trial conferences on Tektronix' case were held during 1962-64 and on February 1, 1965, the trial opened at the US Court of Claims in Washington, D.C., with

Robert E. Conrad, attorney, representing Tektronix.

Witnesses for Tektronix were Bill Webber, vice-president, and Jim Knapton, IE Curve Tracers project manager. Jim was our major witness. Others involved were Jim Castles, Tektronix general counsel; Jack Day, Patents and Licensing; and Steve Blore, Tek's patent attorney.

The trial began in February 1965 but was recessed two weeks later when Richard Egan, Hickock's attorney, was hospitalized for a bleeding ulcer. The trial resumed nine months later in November 1965 and was subsequently recessed two more times before it was adjourned in March 1966.

During the course of the trial, nine witnesses were called, including representatives from the US government, Hickok and Lavoie. Tektronix introduced more than 175 pieces of evidence, including six Tek products—two scopes, two plug-ins and two probes.

The decision was delayed by a series of events, including the bankruptcy of Lavoie, the case load of the commissioner, the complexity of the case and the elevation of Commissioner Donald Lane to a judgeship.

Commissioner Davis, who succeeded Lane, made his recommendation last week.



This was the scene in the US Court of Claims in Washington, D.C. during one of the sessions in 1965. At table on left are (from front of picture) Jim Knapton, Tek's expert witness; Steve Blore, patent attorney from Portland; and Bob Conrad, Tek's trial attorney.

Oral arguments heard by Court

Oral arguments of Tek's patent infringement case against the US government were heard by the US Court of Claims on May 7 in Washington, D.C. Commissioner James F. Davis had ruled in April 1970 that all eight of Tek's patents were valid and had been infringed.

All parties in the case had filed their briefs with the Court earlier this year.

Bob Conrad, Tektronix patent trial attorney, presented the arguments for Tektronix, Inc. The Justice Department attorneys argued for the US Government and Richard Egan for Hickok Electrical Instrument Co., the latter a third-party defendant in the case.

The Court will now consider the briefs, oral arguments and recommendation of Commissioner Davis before making its decision, hopefully by summer recess in June.

US Court of Claims rules for Tek in patent case

Commissioner's findings adopted

Tek wins its patent case against US government

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two relating to vertical circuits and six relating to horizontal circuits. The defendants did not challenge the validity or infringement of the patents relating to vertical circuits.

In November 1962, the US government filed a counterclaim that Tektronix had infringed two government-owned patents, the first time in US history that the government had sued for infringement of its patents.

Tektronix decided to test the government's right to assert such a counterclaim and filed a motion of summary judgment in August 1964, arguing that the government, throughout its history of patent administration, has never published procedures for licensing its patents and therefore has granted implied right for their free use.

In October 1965, the US Court of Claims granted Tektronix motion for a summary judgment and

dismissed the government's counterclaim.

A series of pre-trial conferences on Tektronix' case was held during 1962-64 and on February 1, 1965, the trial opened at the US Court of Claims in Washington, D.C., with Robert E. Conrad and Stephen Blore, attorneys, representing Tektronix.

Witnesses for Tektronix were Bill Webber, vice-president, and Jim Knapton, Portable and LF Group. Jim was our major witness. Others involved were Jim Castles, Tektronix general counsel, and Jack Day, formerly with Patents and Licensing.

The trial began in February 1965 but was recessed two weeks later when Richard Egan, Hickok's attorney, was hospitalized for a bleeding ulcer. The trial resumed nine months later in November 1965 and was subsequently recessed two more times before it was adjourned in March 1966.

During the course of the trial, nine witnesses were called, including representatives from the US government, Hickok and Lavoie. Tektronix introduced more than 175 exhibits, including six Tek products — two scopes, two plug-ins and two probes.

The decision was delayed by a series of events, including the bankruptcy of Lavoie, the case load of the commissioner, the complexity of the case and the elevation of Commissioner Donald Lane, who was hearing the case, to a judgeship.

Commissioner James F. Davis, who succeeded Lane, made his recommendation to the Court on April 22, 1970, but thereafter the defendants filed exceptions which required briefs and a hearing, causing the delay that finally resulted in the Court adopting the Commissioner's findings last Friday.

Tektronix has won its patent infringement case filed against the US government more than 10 years ago.

The US Court of Claims ruled last Friday that all eight of the company's patent claims are valid and infringed by the US government, and that Tektronix is entitled to recover reasonable and entire compensation for their unauthorized use.

The amount of liability will be determined in further proceedings before a trial commissioner. Before that, however, the government can petition the US Supreme Court to review the case.

Tektronix filed suit on March 2, 1961 charging that the US government encouraged the copying of our patented instruments on military contracts. Subsequently three suppliers, Hickok Electrical Instrument Co., Jetronic Industries, Inc., and Lavoie Laboratories, Inc., were brought into the case as third-party defendants.

At the heart of the issue were eight patented circuits in Tektronix Types 535 and 545 oscilloscopes,

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Court of Claims sets date of trial

November 5 has been set by the US Court of Claims as the earliest date for the trial on the accounting to determine the amount of compensation Tektronix is entitled to receive on its patent infringement suit against the US government.

Hal Cooper, new commissioner for the Court of Claims and the third person assigned to the case, set the date on March 15 when all parties involved in the lawsuit appeared before him.

The Court of Claims on June 11, 1971, ruled that all eight of Tek's patent claims were valid and infringed by the US government and that we are entitled to recover "reasonable and entire compensation" for their unauthorized use.

Patent trial resumes Monday to decide on compensation

WASHINGTON, D.C.—The trial to determine compensation in Tek's suit against the U.S. government gets under way Monday in the Court of Claims following postponement of the original November 5 trial date at the government's request.

Robert Conrad and Robert Miller, our attorneys from Washington, D.C., and Eric Jorgensen, assistant secretary, will represent Tek in the trial which is expected to last about six weeks.

Commissioner Hal D. Cooper will hear the case and present his

findings to the court. A decision is not expected until several months after the trial.

Tek's suit against the U.S. government began on March 2, 1961 when we claimed that three suppliers of government military contracts had infringed eight of our patents.

In June, 1971, the Court of Claims entered judgment that Tek was entitled to "reasonable and entire compensation." The forthcoming trial is to determine the amount of that compensation.

Court of Claims trial recessed until March

WASHINGTON, D.C.—The trial on the accounting phase to determine compensation in Tektronix' suit against the U.S. government, which began in the Court of Claims on December 10, was recessed on January 17.

It is scheduled to resume on March 25, but may begin a week earlier if Trial Judge Hal D. Cooper's trial schedule permits.

During the first session of the current trial, Tek presented its

evidence and rested its case on January 8. The government and third party defendants, Hickok Instrument Company and Jetronics, also began their presentation on the case January 8.

The defense is expected to complete its case when the trial resumes and Tek expects to finish its rebuttal by April 1. Tek must present its requested findings of fact and legal arguments supporting its position

within 30 days after the trial judge orders the closing of proofs.

The defendants will have 30 days after that to file their requested findings of fact and their brief on the law, and Tek will have 20 days thereafter to file any objections to the defendants' findings and legal arguments.

Eric Jorgensen, one of three attorneys representing Tek at

the trial, said the government will probably request an extension of time to comply because of the great length of the trial and complexity of the evidence.

The Trial Judge has stated that he expects to render his decision regarding "reasonable and entire compensation due Tektronix" within 60 to 90 days after all materials have been submitted to him.

Tek's suit against the government was filed initially in March 1961. The trial on the liability and infringement aspects began in 1965 and judgment upholding the validity of Tek's patents and finding U.S. government infringement was handed down by the court in June 1971.

In addition to Eric, attorneys representing Tek before the Court of Claims are Robert Miller and Robert Conrad.

Trial judge decides \$7,381,174 for Tek

WASHINGTON, D.C.—U.S. Court of Claims Trial Judge Hal Cooper last week awarded Tektronix \$7,381,174 in its 1961 patent infringement suit against the U.S. government.

In handing down his opinion, Judge Cooper determined that \$4,831,773 was for reasonable royalties to Tektronix for the patent infringements, and

\$2,549,401 was for delayed damages.

Eric Jorgensen, Tek's assistant secretary and general counsel, said the U.S. government and third-party defendants have 30 days to take exception to the opinion before the full Court of Claims.

He also noted that any award to Tek is subject to possible

appeal and Congressional appropriation.

For accounting purposes, Tek will treat any recovery as a prior year adjustment which would have no effect on the current year's earnings. Profit share and taxes paid from any reward received will reduce the adjustment to Tek's reinvested earnings.

Court of Claims issues decision

WASHINGTON, D.C.—The U.S. Court of Claims on March 23 issued its decision that Tektronix, Inc., plaintiff in the 1961 patent infringement suit against the United States, is entitled to recover \$2,129,808 plus delayed compensation to be determined in further proceedings before a new trial judge.

However, even this latest ruling may not be final in light of future events.

The court based its decision on a royalty rate of 10 per cent on the total scope contract of \$21,298,080 in which Tek patents were infringed. This consisted of \$9,740,385 for regular scopes and \$11,557,695 for

militarized scopes and plug-ins.

Trial Judge Hal Cooper of the Court of Claims recommended in September 1975 that Tek was entitled to recover \$4,831,773 plus compensation for delay damages at \$2,549,401.

Both sides excepted to some of Judge Cooper's findings which were reviewed by the full court. Tek had asked for \$12,994,638 on the principal amount and \$25,005,090 for delayed damages. The government asked the court to fix \$185,445 as damages plus \$91,590 for delay compensation.

In announcing its decision, the court said it agreed with and borrowed from much of Judge Cooper's reasoning, but came to different results on compensation and delay damages.

It rejected Tek's lost-profit theory

and the government's nominal sliding scale royalty, stating that neither was satisfactory as a basis for a decision.

Until a decision is reached by both parties on whether to seek review, it will be difficult to predict when legal proceedings will conclude and Tek will be paid.

As Tek has previously stated, for accounting purposes any recovery will be treated as an adjustment to prior years and will have no effect on earnings for the current year.

Court refuses to review patent case

WASHINGTON, D.C.—The Supreme Court this week refused to review the trial court judgment in Tektronix' long-standing patent infringement suit against the United States Government.

As a result, the last judicial obstacle to a claim for payment of the judgment has been removed. The trial court granted judgment in favor of Tektronix on April 19,

1978, for \$4,238,307 plus interest from July 1, 1977.

A number of procedural steps must be taken to obtain payment of the judgment; when received by Tektronix, the payment will be taken into current income.

Al Swanson (Controller) said the award will not greatly affect profit share. At period 907 payroll rates, the award would

add less than 9 per cent to the monthly total, which breaks down to less than 4 per cent cash for the period.

Al noted that month-to-month profit share fluctuations are often greater than 4 per cent, so the results of the award would be "hardly noticeable."

Tektronix' Court of Claims case 'est finis'

The headline in *The Oregonian* (June 17, 1971) declared: "Tektronix wins 10-year suit against U.S."

The cheers of seven-and-a-half years ago became smiles a week or so ago when payment of \$4.5 million to Tektronix from the government took place. It had been a long fight, and when you take on Uncle Sam, you need the patience of a fisherman in a dry streambed.

For the beginning, go back to March, 1961, when Tektronix filed suit against the U.S. government in the U.S. Court of Claims, seeking "reasonable and entire compensation" for the government's use of Tek patents that resulted when it awarded contracts to manufacture "Tektronix" oscilloscopes to three other manufacturers.

In the Tektronix Newsletter to managers, Bill Webber (then Vice President) explained the background:

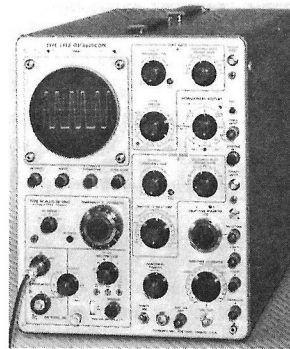
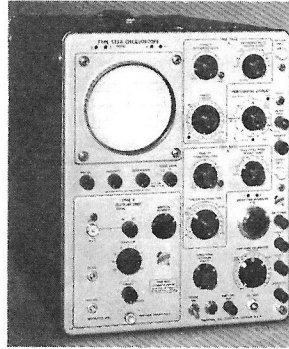
In 1958 the Signal Corps awarded a contract for about 250 Tektronix Type 535 oscilloscopes to Hickock Electrical Instrument Company of Cleveland. Later the contract was increased, and another contract for Tek-type scopes awarded to Jetronics, Inc. of Philadelphia.

The Air Force also has awarded contracts to Hickock for our 545 oscilloscopes. When we heard of the first contract we notified Hickock that if they built the instruments they would infringe on our patents. At the same time we refused to license that company to produce our scopes.

The government then asked us to license it. Again we refused, negotiating instead for an out-of-court settlement of the infringements.

Patent indemnity clauses in government contracts require Hickock to refund to the government any settlement the government makes. However, Hickock has refused what we consider a reasonable settlement. Further negotiation doesn't seem justified, so we have notified the Signal Corps and Air Force patent offices, and Hickock, that we will make no further offer, and will begin suit.

It would appear that we have no other choice than court action, but we enter court with mixed emo-



TEKTRONIX PATENTS for the Type 535 and 545 oscilloscopes were infringed by the U.S. Government, resulting in a Tek suit in the Court of Claims back in February 1961. The suit was won in 1971 and Tek received a check for \$4.5 million in December 1978.

tions. We feel we are right, both morally and legally. However, a lawsuit is costly and does involve some hazards.

Basically what we seek is to keep other firms from pirating our distinctive designs, seemingly with governmental approval.

We will continue to work vigorously toward a more equitable government procurement policy, one in which the government encourages the creators rather than the copiers.

It took ten years to establish the validity of Tek's patents and the fact of infringement, and another seven plus years to determine the amount of compensation and get judgment against the government. This period was marked by a number of legal maneuvers and decisions:

- In November, 1962, the Justice department answered Tek's suit with a counterclaim that Tek had infringed two government patents.

It was the first time in history the U.S. government had claimed infringement of its patents.

The 1971 *Oregonian* article said:

"The government suit did not cause Tektronix to back off its claim. Instead Tektronix filed for a motion of summary judgment in August, 1964, arguing that the government, through its history of patent administration, has never published procedures for licensing its patents and had therefore granted implied right for their free use. In October, 1965, the U.S. Court of Claims dismissed the government's countersuit."

- On April 22, 1970, the U.S. Court of Claims decided the Tek patents were valid and had been infringed.

- Trial Judge Hal Cooper handed down an opinion recommending \$7,381,174 to Tektronix on September 4, 1975. The judge determined that \$4,831,773 was reasonable royalties to Tek for the infringement and \$2,549,401 was for delayed damages. The court did not accept Trial Judge Cooper's recommendation and filed its opinion on March 23, 1977, concluding that Tektronix is entitled to \$4,323,422 plus additional delay compensation of \$491.66 per day from July 1, 1977 to the date of payment. The Court again modified the trial judge's opinion and entered judgment on April 19, 1978, awarding Tek \$4,238,307 plus the daily interest of \$491.66 from July 1, 1977 until paid which occurred on December 29, 1978. Of this amount \$2,243,220 was for basic compensation and \$1,995,087 was for delayed damages with interest to date of payment at the daily rate to bring the final payoff figure to the approximate \$4.5 million.

Jim Castles (Corporate Counsel) advised the Administrative Council on September 10, 1975, "not to count our chickens before they're hatched." He added that Judge Cooper's opinion was unique in that the amount found was three times higher than any previous case, and the royalties were the highest awarded in that court up to that time.

- The Justice department considered bringing the case to the U.S. Supreme Court, but decided not to do so.

The Court of Claims case est finis. The \$4.5 million will be reckoned as company income, and will help boost profit share a little, less than 4 percentage points on the profit share percentage to be paid on the January 25 paycheck.