

# Fluke seeks gag order in bitter dispute with smaller rival

By STEVE WILHELM

A restraining order is being sought by John Fluke Manufacturing Co. Inc. against Bellevue-based Philipp Technologies Corp., as Fluke tries to stop a war of words that erupted along with a patent fight between the two.

Fluke spokesman John Mattson told the *Business Journal* at presstime that Fluke will ask arbitrator William Baron to prevent Hal Philipp, president of Philipp Technologies, from contacting the press about the dispute.

Philipp has launched a media broadside against Fluke as his tiny research and development firm takes on the much larger maker of digital test equipment. Fluke's 1989 sales were \$248 million.

While Fluke tends to dismiss the disa-

greement as part of doing business in the litigious area of patent law, the case has stirred considerable interest in the electronics community. An article about it was published in the Dec. 18 issue of *Electronics News*, and managers of several other firms say the Philipp case is part of a pattern of legal heavy-handedness on Fluke's part.

The Philipp case focuses on technologies intended to be used in a hand-held oscilloscope, a device that could be a valuable addition to Fluke's line of digital hand-held multimeters and other test equipment.

In July 1988 Philipp and Fluke signed a consulting contract for further development of the technologies, for which Philipp's firm was paid \$10,000 a month. The contract included an arbitration clause

in the event of a dispute.

The contract was renewed and expanded several times but Fluke let it lapse in July 1989, Mattson says, because Philipp had made unreasonable requirements for renewal, including a several-million-dollar advance before any of the devices were actually sold.

Philipp tells a different story, claiming the agreement broke down when Fluke refused to guarantee it would sell a single product based on the technology. At presstime Philipp was unavailable to respond to the claim he had requested a larger advance.

But he said earlier, "In my opinion they are absolute scoundrels the way they terminated this thing."

There are even hostages in this tale: two prototype boards that Fluke and Phi-

lipp developed while working together, which Fluke refuses to return. The boards have become a key element in the dispute, and arbitrator Baron will be called upon for a Solomon-like decision about who will get how much of what.

"We believe a portion of that prototype is owned by us and until the arbitrator makes a ruling, we don't intend to relinquish it," Mattson says.

Directors of several other development firms say the Philipp case is consistent with what they see as Fluke's tendency to use its financial and legal muscle to intimidate smaller companies in patent disputes. New technologies are important to Fluke, which holds a leadership position in a mature industry and needs new technologies to stay ahead.

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Robert Corby, president of Talon Instruments in San Dimas, Calif., is locked in another patent dispute over competing board testers the two firms make. Fluke has sued Talon for alleged patent infringement but Talon countersued for 'unfair competitive practices,' claiming a third company, Millenium Systems, had the technologies before Fluke did.

"We're just trying to survive. . . I think it's a damn shame," Corby said of the litigation, which he said was financially draining to his own and other firms.

"Patented technologies are our life-blood," replies Mattson. "The fact that Talon is a small company has no bearing on our decision to sue."

Several directors of small firms say they believe Fluke is exerting legal pressure on them because it is losing its technological edge, and is becoming dependent on others.

But Mattson replies that research and development continues to be of key importance for Fluke, and that the company yearly dedicates 8 to 10 percent of its sales revenues, or \$20 million to \$25 million, to research.

"That's a healthy amount," says Philip Sancken, a Piper Jaffray analyst. ■