SOLTA MEDICAL INC
Form 10-Q
November 04, 2009
Table of Contents

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 10-Q

x QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended September 30, 2009

¨ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission File Number: 001-33123

SOLTA MEDICAL, INC.

(Exact name of registrant as specified in its charter)

Delaware	**68-0373593**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**

25881 Industrial Boulevard, Hayward, California 94545

(Address of principal executive offices) (Zip Code)

(510) 782-2286

(Registrant s telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes x No ¨

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ¨ No ¨

Indicate by check mark whether the registrant is a Large accelerated filer, an accelerated filer, a non-accelerated filer or a small reporting company. See definition of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.

Large accelerated Filer ¨	Accelerated filer ¨
Non-accelerated filer x (Do not check if a smaller reporting company)	Smaller reporting company ¨

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ¨ No x

As of October 31, 2009, 47,866,829 shares of the registrant s common stock were outstanding.

Table of Contents

SOLTA MEDICAL, INC.

INDEX

Table of Contents

PART 1. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS (unaudited)

Solta Medical, Inc.

CONDENSED CONSOLIDATED BALANCE SHEETS

(in thousands of dollars, except share and per share data)

(Unaudited)

	September 30, 2009	December 31, 2008
ASSETS		
Current assets:		
Cash and cash equivalents	$ 14,723	$ 7,556
Marketable investments		17,870
Accounts receivable, net	9,100	5,119
Inventories, net	13,363	18,304
Prepaid expenses and other current assets	3,198	4,074
Total current assets	40,384	52,923
Property and equipment, net	6,036	6,841
Purchased intangible assets, net	37,849	40,999
Goodwill	47,289	48,158
Other assets	265	247
Total assets	$ 131,823	$ 149,168
LIABILITIES AND STOCKHOLDERS EQUITY		
Liabilities:		
Accounts payable	$ 5,699	$ 8,080
Accrued liabilities	9,838	11,085
Accrued restructuring	307	3,549
Current portion of deferred revenue	4,452	3,658
Short-term borrowings	7,411	12,399
Customer deposits	288	288
Total current liabilities	27,995	39,059
Deferred revenue, net of current portion	526	688
Term loan, net of current portion	1,998	
Non-current tax liabilities	1,514	1,464
Other liabilities	306	133
Total liabilities	32,339	41,344
Contingencies (Note 9)		
Stockholders equity:		
Preferred stock, $0.001 par value:		
10,000,000 shares authorized, none issued and outstanding		
Common stock, $0.001 par value:		

100,000,000 shares authorized, 47,866,829 and 47,758,823 shares issued and outstanding at September 30, 2009 and December 31, 2008, respectively	48	48
Additional paid-in capital	168,274	165,680
Deferred stock-based compensation		(2)
Accumulated deficit	(68,838)	(57,902)
Total stockholders equity	99,484	107,824
Total liabilities and stockholders equity	$ 131,823	$ 149,168

The accompanying notes are an integral part of these condensed consolidated financial statements.

Table of Contents

Solta Medical, Inc.

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

(in thousands of dollars, except share and per share data)

(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	**2008**	**2009**	**2008**
Net revenue	$ 17,753	$ 13,020	$ 70,415	$ 47,132
Cost of revenue	7,311	3,209	29,595	11,662
Gross margin	10,442	9,811	40,820	35,470
Operating expenses:				
Sales and marketing	8,958	5,915	28,471	20,330
Research and development	4,239	2,150	12,104	7,054
General and administrative	3,793	2,575	11,563	10,173
Total operating expenses	16,990	10,640	52,138	37,557
Loss from operations	(6,548)	(829)	(11,318)	(2,087)
Interest and other income	195	635	432	1,781
Interest and other expenses	(136)		(287)	
Gain (loss) on investments	159	(863)	224	(863)
Loss before income taxes	(6,330)	(1,057)	(10,949)	(1,169)
Provision (benefit) for income taxes	(84)	89	(13)	175
Net Loss	$ (6,246)	$ (1,146)	$ (10,936)	$ (1,344)
Net loss per share:				
Basic	$ (0.13)	$ (0.05)	$ (0.23)	$ (0.06)
Diluted	$ (0.13)	$ (0.05)	$ (0.23)	$ (0.06)
Weighted average shares outstanding used in calculating net loss per share:				
Basic	47,855,428	24,067,548	47,807,180	23,861,079
Diluted	47,855,428	24,067,548	47,807,180	23,861,079

The accompanying notes are an integral part of these condensed consolidated financial statements.

Table of Contents

Solta Medical, Inc.

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(in thousands of dollars)

(Unaudited)

	Nine Months Ended September 30,	
	2009	**2008**
Cash flows from operating activities		
Net loss	$ (10,936)	$ (1,344)
Adjustments to reconcile net loss to net cash (used in) provided by operating activities:		
Depreciation and amortization	5,196	1,002
Amortization of premium on marketable investments	106	201
Other than temporary loss on investments (realized gain)	(227)	863
Loss on disposal on property, plant and equipment	15	8
Stock-based compensation	2,476	2,789
Tax expense from stock option exercises		32
Change in assets and liabilities		
Accounts receivable	(3,981)	(1,119)
Inventories	4,629	(253)
Prepaid expenses and other current assets	847	381
Other non-current assets	(18)	(165)
Accounts payable	(1,906)	341
Accrued and other liabilities	992	(1,320)
Accrued restructuring	(3,391)	
Deferred revenue	632	(144)
Customer deposits		39
Deferred rent	245	59
Net cash (used in) provided by operating activities	(5,321)	1,370
Cash flows from investing activities		
Acquisition of property and equipment	(1,486)	(737)
Pre-acquisition debt financing provided to Reliant		(5,000)
Payments for acquisition, net of escrow settlement	(1,139)	(315)
Purchase of marketable investments		(8,581)
Sales and maturities of marketable investments	17,990	20,121
Net cash provided by investing activities	15,365	5,488
Cash flows from financing activities		
Proceeds from debt	18,975	
Repayment of debt	(12,405)	
Repayment of short-term margin account borrowings	(9,566)	
Proceeds from exercise of stock options	26	532
Proceeds from employee stock purchase plan	93	196
Net cash provided by (used in) financing activities	(2,877)	728
Net increase in cash and cash equivalents	7,167	7,586
Cash and cash equivalents at beginning of period	7,556	13,650

Cash and cash equivalents at end of period	$ 14,723	$ 21,236
Supplemental disclosure of cash flow information:		
Cash paid for interest	$ 221	$
Cash paid for income taxes	$ 367	$ 39
Merger & acquisition costs	$ 2,383	$ 1,328

The accompanying notes are an integral part of these condensed consolidated financial statements.

Table of Contents

Solta Medical, Inc.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

(in thousands of dollars, except share and per share amounts)

(Unaudited)

NOTE 1 THE COMPANY AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Solta Medical, Inc. (the Company) develops, manufactures, and markets aesthetic energy devices to address aging skin. The Company was incorporated in California on January 11, 1996 as Thermage, Inc. and reincorporated in Delaware on September 10, 2001. The Company commercially launched its first products in October 2002. Following the acquisition of Reliant Technologies, Inc. (Reliant) on December 23, 2008, the Company changed its name to Solta Medical, Inc.

Basis of Presentation

The unaudited interim condensed consolidated financial statements have been prepared on the same basis as the annual consolidated financial statements and, in the opinion of management, reflect all adjustments, which include only normal recurring adjustments, necessary to state fairly the Company s financial position as of the date of the interim balance sheet and results of operations and cash flows for the interim periods. The results for the three and nine months ended September 30, 2009 are not necessarily indicative of the results to be expected for the year ending December 31, 2009 or for any other interim period or for any future year.

The Company has evaluated subsequent events for the period from September 30, 2009, the date of these financial statements, through November 4, 2009, which represents the date these financial statements are being filed with the SEC. There were no events or transactions occurring during this subsequent event reporting period which require recognition or disclosure in the financial statements. With respect to this disclosure, the Company has not evaluated subsequent events occurring after November 4, 2009.

These unaudited interim condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and notes for the year ended December 31, 2008 included in the Company s Annual Report on Form10-K.

Liquidity

In the year ended December 31, 2008 and nine months ended September 30, 2009, the Company incurred net cash outflows from operations. The Company entered into a term loan and revolving loan agreement in March 2009, which was subsequently amended later in the same month and in June 2009. The agreement contains certain financial and non-financial covenants. The Company s future liquidity requirements may increase beyond currently expected levels if it fails to maintain compliance with such covenants under the terms described in Note 8, if revenue does not reach current expected results, or if it fails to achieve cost savings and synergies from the Reliant acquisition or if unanticipated expenses or other uses of its cash arise. In order to meet its future liquidity needs, the Company may become reliant on additional equity and/or debt financing. Additional financing may not be available on a timely basis or on terms acceptable to the Company. If adequate funds are not available, the Company may have to delay development of new products or reduce marketing, customer support or other resources devoted to its products. Any of these factors could harm the Company s business and financial condition.

Significant Accounting Policies

The Company s significant accounting policies are disclosed in the Company s Annual Report on Form 10-K filed on March 31, 2009, and have not changed since December 31, 2008.

Segment Information

The Company operates in one business segment, which encompasses the developing, manufacturing and marketing of aesthetic energy devices to address aging skin. Management uses one measurement of profitability and does not segregate its business for internal reporting. All long-lived assets are maintained in the United States.

Table of Contents

Solta Medical, Inc.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(in thousands of dollars, except share and per share amounts)

(Unaudited)

The following table summarizes net revenue by product:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Systems	$ 5,987	$ 2,854	$ 28,390	$ 11,546
Tips and other consumables	9,552	9,801	35,000	34,391
Net revenue from products	15,539	12,655	63,390	45,937
Services and other	2,214	365	7,025	1,195
Total net revenue	$ 17,753	$ 13,020	$ 70,415	$ 47,132

The following table summarizes net revenue by geographic region:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
United States	$ 8,240	$ 6,645	$ 31,240	$ 23,834
Asia Pacific	4,384	3,557	16,185	11,671
Europe/Middle East	3,873	1,661	17,619	6,933
Rest of the world	1,256	1,157	5,371	4,694
Total net revenue	$ 17,753	$ 13,020	$ 70,415	$ 47,132

NOTE 2 NET LOSS PER SHARE

Basic net loss per share is computed by dividing the net loss for the period by the weighted average number of common shares outstanding during the period as reduced by the weighted average unvested common shares subject to repurchase by the Company.

Diluted net loss per share is computed by dividing the net loss for the period by the weighted average number of common and potential common shares outstanding during the period, if the effect of each class of potential common shares is dilutive. Potential common shares include incremental shares of common stock issuable upon the exercise of stock options and warrants, incremental shares of common stock issuable under employee stock purchase plans and restricted stock units. The dilutive effect of potential common shares is reflected in diluted net loss per share by application of the treasury stock method, which includes consideration of stock-based compensation. There are no dilutive potential common shares included in the diluted net loss per share calculation as the Company was in a loss position and the inclusion would have been anti-dilutive for the three and nine months ended September 30, 2008 and 2009.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Net loss per share:				
Net loss	$ (6,246)	$ (1,146)	$ (10,936)	$ (1,344)
Weighted average shares used in calculating basic and diluted net loss per share	47,855,428	24,067,548	47,807,180	23,861,079
Basic net loss per share	$ (0.13)	$ (0.05)	$ (0.23)	$ (0.06)
Diluted net loss per share	$ (0.13)	$ (0.05)	$ (0.23)	$ (0.06)

Table of Contents

Solta Medical, Inc.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(in thousands of dollars, except share and per share amounts)

(Unaudited)

The following outstanding options, warrants, common stock issuable under the Employee Stock Purchase Plan and restricted stock units were excluded from the computation of diluted net loss per common share for the periods presented because including them would have had an antidilutive effect:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Options to purchase common stock	6,734,368	4,429,424	6,734,368	4,429,424
Warrants to purchase common stock	344,105	27,778	344,105	27,778
Common stock issuable under Employee Stock Purchase Plan	153,371	75,646	153,371	75,646
Restricted stock units				

NOTE 3 RECENT ACCOUNTING PRONOUNCEMENTS

In December 2007, ASC 805, *Business Combinations* (ASC 805) was revised. This revision changes the accounting for business combinations including the measurement of acquirer shares issued in consideration for a business combination, the recognition of contingent consideration, the accounting for preacquisition gain and loss contingencies, the recognition of capitalized in-process research and development, the accounting for acquisition-related restructuring cost accruals, the treatment of acquisition-related transaction costs and the recognition of changes in the acquirer s income tax valuation allowance. ASC 805 is effective for fiscal years beginning after December 15, 2008, with early adoption prohibited. Additionally, in February 2009, ASC 805-20-35-3, *Accounting for Assets Acquired and Liabilities Assumed in a Business Combination That Arise from Contingencies*, will amend the provisions related to the initial recognition and measurement, subsequent measurement and disclosure of assets and liabilities arising from contingencies in a business combination under ASC 805. The Company adopted ASC 805-20-35-3 on January 1, 2009 and will apply this new accounting standard for future business combinations.

In December 2007, ASC 810-10-65-1, *Non-controlling Interests in Consolidated Financial Statements,* was amended. This amendment changes the accounting for non-controlling (minority) interests in consolidated financial statements including the requirements to classify non-controlling interests as a component of consolidated stockholders equity, and the elimination of minority interest accounting in results of operations with earnings attributable to non-controlling interests reported as part of consolidated earnings. Additionally, ASC 810-10-65-1 revises the accounting for both increases and decreases in a parent s controlling ownership interest. ASC 810-10-65-1 is effective for fiscal years beginning after December 15, 2008, with early adoption prohibited. The Company s adoption of ASC 810-10-65-1 on January 1, 2009 did not have a material impact on the Company s financial position, results of operations or cash flows.

In February 2008, ASC 820-10-15-1A was amended, which delayed the effective date of ASC 820, *Fair Value Measurements and Disclosures*, for all non-financial assets and non-financial liabilities, except for items that are recognized or disclosed at fair value in the financial statements on a recurring basis (at least annually), until the beginning of the first quarter of fiscal year 2009. The Company s adoption of 820-10-15-1A on January 1, 2009 did not have a material impact on the Company s financial position, results of operations or cash flows.

In April 2008, ASC 350-30-65-1, *Determination of the Useful Life of Intangible Assets* (ASC 350-30-65-1), amended the factors considered in developing renewal or extension assumptions used to determine the useful life of a recognized intangible asset under ASC 350, *Intangibles-Goodwill and Other,* ASC 350-30-65-1 requires a consistent approach between the useful life of a recognized intangible asset under ASC 350 and the period of expected cash flows used to measure the fair value of an asset under ASC 805. ASC 350-30-65-1 also requires enhanced disclosures when an intangible asset s expected future cash flows are affected by an entity s intent and/or ability to renew or extend the arrangement. ASC 350-30-65-1 is effective for financial statements issued for fiscal years beginning after December 15, 2008 and is applied prospectively. Early adoption is prohibited. The Company s adoption of ASC 350-30-65-1 on January 1, 2009 did not have a material impact on the Company s financial position, results of operations or cash flows.

8

Table of Contents

Solta Medical, Inc.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(in thousands of dollars, except share and per share amounts)

(Unaudited)

In June 2008, ASC 815-10-65-3, *Determining Whether an Instrument (or Embedded Feature) is Indexed to an Entity s Own Stock*, provides guidance for determining whether an equity-linked financial instrument (or embedded feature) is indexed to an entity s own stock, which would qualify as a scope exception under ASC 815-10-15-74(a), *Accounting for Derivative Instruments and Hedging Activities*. ASC 815 is effective for fiscal years beginning after December 15, 2008 and early adoption for an existing instrument is not permitted. The Company s adoption of ASC 815 on January 1, 2009 did not have a material impact on the Company s financial position, results of operations or cash flows.

In April 2009, ASC 820-10-65-4, *Determining Fair Value When the Volume and Level of Activity for the Asset or Liability Have Significantly Decreased and Identifying Transactions That Are Not Orderly*, provided additional guidance for estimating fair value in accordance with ASC 820, *Fair Value Measurements and Disclosures*, when the volume and level of activity for the asset or liability have significantly decreased. This ASC also includes guidance on identifying circumstances that indicate a transaction is not orderly. This ASC emphasizes that even if there has been a significant decrease in the volume and level of activity for the asset or liability and regardless of the valuation technique(s) used, the objective of a fair value measurement remains the same. Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction (that is, not a forced liquidation or distressed sale) between market participants at the measurement date under current market conditions. ASC 820-10-65-4 is effective for interim and annual reporting periods ending after June 15, 2009, and is applied prospectively. Accordingly, the Company adopted the provisions of ASC 820-10-65-4 on April 1, 2009. The adoption of this guidance did not have a material impact on the Company s financial position, results of operations or cash flows.

In April 2009, ASC 825-10-65-1, *Interim Disclosures about Fair Value of Financial Instruments*, was revised to require disclosures about fair value of financial instruments in interim as well as annual financial statements. This standard is effective for periods ending after June 15, 2009. Accordingly, the Company adopted the provisions of ASC 825-10-65-1 on April 1, 2009. The adoption of this guidance did not have a material impact on the Company s financial position, results of operations or cash flows. However, the provisions of ASC 825-10-65-1 result in additional disclosures with respect to the fair value of the Company s financial instruments.

In June 2009, ASC 105, *Generally Accepted Accounting Principles,* was issued. ASC 105 relates to the Financial Accounting Standards Board (FASB) Accounting Standards Codification (Codification), which organizes thousands of U.S. GAAP pronouncements under approximately 90 accounting topic areas. The ASC states that the Codification will become the single source for all authoritative GAAP recognized by the ASC to be applied for financial statements issued for periods ending after September 15, 2009. The Codification does not change GAAP and did not have an affect on the Company s financial position, results of operations or cash flows.

In October 2009, the FASB issued Accounting Standards Update (ASU), 2009-13, Revenue Recognition (Topic 605): *Multiple Deliverable Revenue Arrangements A Consensus of the FASB Emerging Issues Task Force.* This update provides application guidance on whether multiple deliverables exist, how the deliverables should be separated and how the consideration should be allocated to one or more units of accounting. This update establishes a selling price hierarchy for determining the selling price of a deliverable. The selling price used for each deliverable will be based on vendor-specific objective evidence, if available, third-party evidence if vendor-specific objective evidence is not available, or estimated selling price if neither vendor-specific or third-party evidence is available. The Company will be required to apply this guidance prospectively for revenue arrangements entered into or materially modified after January 1, 2011; however, earlier application is permitted, as early as interim periods ended September 30, 2009. The Company has not determined the impact that this update may have on its financial statements.

NOTE 4 ACQUISITION OF RELIANT TECHNOLOGIES, INC.

On December 23, 2008, the Company acquired 100% of the common stock of Reliant Technologies, Inc. (Reliant), a privately held medical device company, for $25,000 in cash, 23.6 million shares of Solta Medical common stock and assumption of $9,438 of debt, including a $5,000 note payable to the Company. This acquisition expands the market presence of the Company. Complementary product offerings allow the Company to cross-sell a more complete product line to physicians and their patients through one of the largest direct U.S. sales forces in the industry and an expansive international distribution network.

9

Table of Contents

Solta Medical, Inc.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(in thousands of dollars, except share and per share amounts)

(Unaudited)

The Company s condensed consolidated financial statements for the three and nine months ended September 30, 2009 include the results of operations of Reliant. The purchase price is the total of $25,000 cash paid, $61,407 for 23.6 million shares issued at the $2.60 average closing share price over the period two days before to two days after the merger announcement date, $181 fair value of assumed warrants and $4,051 in direct transaction costs. During the quarter ended September 30, 2009, the Company reached an agreement and received from escrow approximately $1,200 for an adjustment of the acquisition consideration from a shortfall in Reliant s closing working capital compared to the amount stipulated in the merger.

The original purchase price allocation adjustments primarily relate to adjustments to residual goodwill for changes in the valuation of inventory acquired, accrued restructuring, prepaid expenses, and an adjustment of the acquisition consideration for a shortfall in Reliant s closing working capital. The following summarizes the purchase price allocation for the Reliant acquisition, adjusted through September 30, 2009:

Assets acquired:	
Cash	$ 1,281
Accounts receivable	2,349
Inventory	11,262
Prepaid expenses and other assets	789
Property and equipment	3,103
Intangible assets:	
Fraxel trade name	3,580
Customer relationships	4,810
Non-compete agreement	500
Core technology	18,420
Product technology	9,270
Product development contract	620
Future royalties contract	3,890
In-process research and development	9,060
Goodwill	47,289
Total assets acquired	116,223
Liabilities assumed:	
Accounts payable	6,182
Accrued liabilities	5,517
Accrued restructuring	3,116
Other liabilities	294
Deferred revenue	2,281
Notes payable (including a $5,000 note payable owed to Thermage)	9,438
Total liabilities acquired	26,828
Net acquired assets	$ 89,395

The Company recorded an estimate for costs to terminate certain activities associated with the Reliant. The original restructuring accrual of $2,967 as of December 31, 2008 was principally related to the termination of 45 Reliant employees for $1,797 and restructuring of facilities of $1,170. This restructuring accrual has been adjusted through September 30, 2009 to $3,116, an increase of $149 due to additional costs identified

with the termination activities.

The valuation of identified intangible assets acquired was based on management s estimates, currently available information and reasonable and supportable assumptions. The allocation was based on the fair value of these assets determined using the income and market approaches. Of the total original purchase price of $90,639, $41,090 was allocated to amortizable intangible assets. $37,200 of the amortizable intangible assets are being amortized using a straight-line method over their respective estimated useful lives of two to 12 years. The royalties intangible asset will be amortized using a straight-line method over its estimated useful life of 10 years once royalty revenues commence. During the quarter ended September 30, 2009, the Company reached an agreement and received from escrow approximately $1,200 related to an adjustment of the acquisition consideration for a shortfall in Reliant s closing working capital and as a result the original purchase price was reduced to $89,395.

Table of Contents

Solta Medical, Inc.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(in thousands of dollars, except share and per share amounts)

(Unaudited)

In conjunction with the acquisition of Reliant, the Company recorded an expense of $9,060 for acquired in-process research and development (IPR&D) during the quarter and year ended December 31, 2008 because feasibility of the acquired technology had not been established and no alternative future use exists. The IPR&D expense was included in operating expenses in the consolidated statement of operations for the year ended December 31, 2008.

The IPR&D is related to the development of three new products, all of which are progressing as planned. The Company determined the value of acquired IPR&D using the discounted cash flow approach. The Company calculated the present value of the expected future cash flows attributable to the in-process technology using a 21% to 23% discount rate. The major risks and uncertainties associated with the timely and successful completion of these IPR&D projects include delays caused by legal actions brought by the Company s competitors and the timing of the receipt of necessary regulatory approvals. No assurances can be given that the underlying assumptions used to prepare the discounted cash flow analysis will not change or the timely completion of each project to commercial success will occur. For these and other reasons, actual results may vary significantly from estimated results.

The Company allocated the residual value of $48,158 to goodwill at December 23, 2008, and adjusted this amount to $47,289 during the nine months ended September 30, 2009 for adjustments to the valuation of inventory acquired, accrued restructuring, prepaid expenses, and adjustments of the acquisition consideration for a shortfall in Reliant s closing working capital. Goodwill represents the excess of the purchase price over the fair value of the net tangible and intangible assets acquired. Goodwill is not amortized, but is tested for impairment on an annual basis or when events and circumstances indicate that the carrying amount of goodwill may not be recoverable. The Company did not have any goodwill prior to the acquisition of Reliant. The Company did not perform a test for goodwill impairment in 2008 as there were no underlying events and circumstances relative to the business which would support an immediate impairment of its acquired goodwill from the December 23, 2008 acquisition date to December 31, 2008. While there were no new events occurring in the short period between the acquisition date and December 31, 2008 that impacted the Company s valuation of goodwill, the Company considered the fact that the publicly traded value of the Company was less than the carrying value, including goodwill, at December 31, 2008. The Company concluded that no impairment of goodwill existed at December 31, 2008 based upon factors including the Company s decision to proceed with the closing of the acquisition after the acquisition plan was announced, the short period of time elapsing since the acquisition date, the implied premium over the quoted market price of the Company s stock resulting from recent third-party acquisition proposals made for the Company prior to the acquisition of Reliant, the business reasons for executing the merger and the benefits that the Company expects to achieve, and management s expectations of the future operating and financial performance of the business. The Company extended these considerations through September 30, 2009 and concluded that no impairment of goodwill existed as of that date. Management will continue to monitor for any indicators that the carrying amount of goodwill may not be recoverable. The occurrence of adverse events or circumstances, including changes in management s expectations of the future financial performance of the business, may result in the Company recording a goodwill impairment charge in a future period.

NOTE 5 BALANCE SHEET DETAIL

Cash, Cash Equivalents and Marketable Investments

The Company considers all highly liquid investments, with an original maturity of three months or less at the time of purchase to be cash equivalents. Investments in debt securities are accounted for as available-for-sale securities held for use in current operations and are classified in current assets as Marketable Investments . Cash, cash equivalents and marketable investments consist of the following:

September 30, 2009	**Amortized Cost**
Checking and money market accounts	$ 14,723

Reported as:	
Cash and cash equivalents	$ 14,723

Table of Contents

Solta Medical, Inc.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(in thousands of dollars, except share and per share amounts)

(Unaudited)

December 31, 2008	Amortized Cost
Checking and money market accounts	$ 7,556
Corporate and Euro dollar bonds	7,291
Medium and short term notes	10,579
	$ 25,426
Reported as:	
Cash and cash equivalents	$ 7,556
Marketable investments	$ 17,870
	$ 25,426

The Company s available-for-sale marketable securities amortized cost approximates fair market value at September 30, 2009 and December 31, 2008. The Company deemed certain declines in the fair market value of its available-for-sale marketable securities as at December 31, 2008 to be other than temporary and as a result, recorded those losses in the results of operations. For the nine months ended September 30, 2008, the Company recorded an $863 loss on these marketable securities; this was primarily related to a single security in its investment portfolio. The Company had no marketable securities as of September 30, 2009 as all these securities matured during the three months ended September 30, 2009.

The Company has a margin account with JP Morgan Chase, related to its marketable investments. The margin account had a liability balance of $12,399 as of December 31, 2008 and a zero balance as of September 30, 2009. The liabilities are included in the accompanying condensed consolidated financial statements as short-term borrowings. Pursuant to the terms of credit offered by JP Morgan Chase, the Company may borrow up to 75% of the market value of the Company s investment account with JP Morgan Chase at an interest rate of the 30-day Libor rate plus 100 basis points (1.25% and 2.08% as of September 30, 2009 and December 31, 2008, respectively). Under the terms of the Customer Agreement signed with JP Morgan Chase, an event of default would occur if, among other things: (i) the Company does not pay any liability or perform any obligation to JP Morgan Chase by the time the Company is obligated to perform such obligation; (ii) the Company otherwise breaches, repudiates or defaults under the Customer Agreement or any other agreement it has with JP Morgan Chase; (iii) the Company commences a proceeding in bankruptcy or insolvency or one is commenced against the Company; (iv) any guarantor, co-signer or other party (a Responsible Party) liable for or providing security for the Company s obligations to JP Morgan Chase defaults in its obligation to JP Morgan Chase or commences a proceeding in bankruptcy or insolvency or one is commenced against it; (v) an attachment is made against the Company s or a Responsible Party s account(s) with JP Morgan Chase; (vi) a receiver is appointed with respect to the Company, any of the Company s assets or the assets of a Responsible Party; or (vii) an event, circumstance or condition occurs that, in JP Morgan Chase s judgment, materially impairs the Company s creditworthiness or the Company s ability to timely perform its obligations. There was no event of default through September 30, 2009.

Fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or liability. A fair value hierarchy prioritizes the inputs used in measuring fair value as follows: (Level 1) observable inputs such as quoted prices in active markets; (Level 2) inputs other than the quoted prices in active markets that are observable either directly or indirectly; and (Level 3) unobservable inputs in which there is little or no market data, which require the Company to develop its own assumptions. This hierarchy requires the Company to use observable market data, when available, and to minimize the use of unobservable inputs when determining fair value. On a recurring basis, the Company measures its cash equivalents and marketable investments at fair value.

Fair value hierarchy of the Company s cash equivalents and marketable investments are classified as follows at September 30, 2009:

	Fair Market Value	Fair Value Measurements at Reporting Date using Quoted Prices in Active Markets for Identical Assets (Level 1)
Money market funds	$ 271	$ 271

Table of Contents

Solta Medical, Inc.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(in thousands of dollars, except share and per share amounts)

(Unaudited)

The Company s financial instruments as of September 30, 2009 consist of cash and cash equivalents, accounts receivable, accounts payable and debt. The carrying amount of these financial instruments approximates fair value because of the relative short maturity of the instruments and there have not been any material changes in the cost of borrowings.

Inventories, Net

Inventories, net consist of the following:

	September 30, 2009	December 31, 2008
Raw materials	$ 4,589	$ 6,058
Work-in-process	1,142	423
Finished goods	7,632	11,823
	$ 13,363	$ 18,304

Intangible Assets

The Company s intangible assets were acquired in connection with the acquisition of Reliant Technologies, Inc. on December 23, 2008. The carrying amount and accumulated amortization expense of the acquired intangible assets are as follows:

September 30, 2009	Estimated Useful Life	Gross Carrying Value	Accumulated Amortization	Net Carrying Value
Intangible assets amortized to cost of revenue:				
Core technology	12 years	$ 18,420	$ 1,185	$ 17,235
Product technology	7 years	9,270	1,022	8,248
Future royalties contract	10 years	3,890		3,890
		31,580	2,207	29,373
Intangible assets amortized to operating expenses:				
Product development contract	1.9 years	620	256	364
Non-compete agreement	2 years	500	193	307
Fraxel trade name	10 years	3,580	276	3,304
Customer relationships	12 years	4,810	309	4,501
		9,510	1,034	8,476
Total intangible assets		$ 41,090	$ 3,241	$ 37,849

December 31, 2008	Estimated Useful Life	Gross Carrying Value	Accumulated Amortization	Net Carrying Value
Intangible assets amortized to cost of revenue:				
Core technology	12 years	$ 18,420	$ 33	$ 18,387
Product technology	7 years	9,270	29	9,241
Future royalties contract	10 years	3,890		3,890
		31,580	62	31,518
Intangible assets amortized to operating expenses:				
Product development contract	1.9 years	620	7	613
Non-compete agreement	2 years	500	5	495
Fraxel trade name	10 years	3,580	8	3,572
Customer relationships	12 years	4,810	9	4,801
		9,510	29	9,481
Total intangible assets		$ 41,090	$ 91	$ 40,999

Table of Contents

Solta Medical, Inc.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(in thousands of dollars, except share and per share amounts)

(Unaudited)

The Company has included amortization of acquired intangible assets directly attributable to revenue-generating activities in cost of revenue. The Company has included amortization of acquired intangible assets not directly related to revenue-generating activities in operating expenses. During the three and nine months ended September 30, 2009, the Company recorded amortization expense in the amounts of $715 and $2,144 to cost of revenue, and $335 and $1,006 to operating expenses, respectively.

The Company has recorded an acquired intangible asset related to a future royalties contract that has not yet begun to generate revenue. The Company has deferred the amortization of the acquired intangible asset related to the future royalties contract until the asset begins to generate revenue.

As of September 30, 2009, the total expected future amortization related to intangible assets, excluding future amortization of the royalties contract, is as follows:

	Amortization included in Cost of Revenue	Amortization included in Operating Expense	Total Amortization Expense
Three months ending December 31, 2009	$ 714	$ 335	$ 1,049
2010	2,859	1,286	4,145
2011	2,859	759	3,618
2012	2,859	759	3,618
2013	2,859	759	3,618
2014 and thereafter	13,333	4,578	17,911
	$ 25,483	$ 8,476	$ 33,959

Accrued Liabilities

Accrued liabilities consist of the following:

	September 30, 2009	December 31, 2008
Payroll and related expenses	$ 3,341	$ 2,876
Accrued transaction costs		2,128
Standard Warranty	972	1,217
Others	5,525	4,864
	$ 9,838	$ 11,085

NOTE 6 WARRANTY AND SERVICE CONTRACTS

Standard Warranty

The Company currently accrues for the estimated cost to repair or replace products under warranty at the time of sale. A summary of standard warranty accrual activity is shown below:

	Nine Months Ended September 30,	
	2009	2008
Balance at beginning of period	$ 1,217	$ 577
Accruals for warranties issued during the period	919	357
Accruals related to pre-existing warranties		
Settlements made during the period	(1,164)	(387)
Balance at end of period	$ 972	$ 547

Table of Contents

Solta Medical, Inc.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(in thousands of dollars, except share and per share amounts)

(Unaudited)

Extended Warranty Contracts

The Company sells extended warranty contracts to its customers. At the time of sale, the Company defers the amounts billed for such service contracts. Deferred service contract revenue, included as Deferred Revenue on the balance sheet, is recognized on a straight-line basis over the period of the applicable extended warranty contract. A summary of extended warranty contract activity is shown below:

	Nine Months Ended September 30,	
	2009	2008
Balance at beginning of period	$ 2,603	$ 1,471
Payments received	2,462	596
Revenue recognized	(2,487)	(727)
Balance at end of period	$ 2,578	$ 1,340

The Company incurred costs of $200 and $503 under extended warranty contracts during the three and nine months ended September 30, 2009, respectively, and costs of $55 and $242 during the three and nine months ended September 30, 2008, respectively.

NOTE 7 ACCRUED RESTRUCTURING

In addition to the restructuring accrual relating to the Reliant acquisition (see Note 4), the Company recorded further accruals for severance payments to 23 former Thermage employees at December 31, 2008. The costs associated with the termination of Thermage employees were recorded as a charge to the income statement for the year ended December 31, 2008. The accrued restructuring charges remaining at September 30, 2009 are expected to be paid in 2009. A summary of all restructuring activity is shown below:

	Severance	Facilities	Total
Balance at December 31, 2008	$ 2,379	$ 1,170	$ 3,549
Adjustments	54	131	185
Cash payments	(2,338)	(1,089)	(3,427)
Balance at September 30, 2009	$ 95	$ 212	$ 307

NOTE 8 CREDIT FACILITY

The Company entered into a Loan and Security Agreement (the Loan Agreement) with Silicon Valley Bank (the Lender) on March 9, 2009 with a subsequent amendment on March 27, 2009, providing for a $6,000 secured revolving loan facility, with availability to be subject to a borrowing base formula, and a $3,000 secured term loan. The Company drew down $3,750 on the revolving loan facility and $3,000 as a term loan in March 2009, and repaid the revolving loan in full in April 2009. On June 30, 2009, the Company entered into another amendment to the Loan Agreement which provides for an increase of the secured revolving loan facility to $8,000 and an additional $1,000 secured term loan. On June 30, 2009, the Company drew down $5,225 on the revolving loan facility and $1,000 as a term loan and repaid the revolving loan in full in July 2009. In September 2009, the Company drew down $6,000 on the revolving loan facility.

Borrowings under the revolving loan facility accrue interest at a per annum rate equal to the Lender s prime rate as in effect from time to time plus 1.00%, subject to a minimum per annum rate of 5.00%. Interest on borrowings under the revolving loan facility is payable monthly. The Company may borrow, repay and reborrow funds under the revolving loan facility until March 9, 2011, at which time the revolving loan facility matures and all outstanding amounts under the revolving loan facility must be repaid. In the event the Company elects to terminate the revolving loan facility on or before the maturity date, the Company is required to pay a fee in the amount of $60.

Table of Contents

Solta Medical, Inc.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(in thousands of dollars, except share and per share amounts)

(Unaudited)

Borrowings under the term loans accrue interest at a per annum effective rate equal to 6.39%. The term loans are payable in 33 equal monthly payments of principal and interest. All outstanding amounts under the initial $3,000 term loan, plus a final payment of $105, will be due and payable on the maturity date of December 1, 2011. All outstanding amounts under the additional $1,000 term loan, plus a final payment of $35, will be due and payable on the maturity date of March 1, 2012. In the event the Company elects to prepay the initial and additional term loans prior to their maturity dates, the Company is required to pay fees in the amount of $60 and $20, respectively.

All obligations under the Loan Agreement are secured by substantially all of the personal property of the Company.

In connection with the Loan Agreement, the Company s subsidiary, Reliant Technologies, LLC (Reliant LLC), entered into an Unconditional Guaranty, dated as of March 9, 2009 (the Guaranty), in favor of Lender, pursuant to which Reliant LLC guaranteed all of the obligations of the Company under the Loan Agreement, and a Security Agreement, dated as of March 9, 2009 (the Security Agreement), with Lender, pursuant to which Reliant LLC granted a security interest in substantially all of its personal property to collateralize its obligations under the Guaranty.

The Loan Agreement contains covenants that include, among others, covenants that limit the Company s and its subsidiaries ability to dispose of assets, enter into mergers or acquisitions, incur indebtedness, incur liens, pay dividends or make distributions on the Company s capital stock, make investments or loans, and enter into certain affiliate transactions, in each case subject to customary exceptions for a credit facility of this size and type. The Loan Agreement also contains financial covenants requiring the Company to maintain a minimum liquidity ratio, a minimum tangible net worth, and, beginning with the quarter ending December 31, 2009, positive EBITDA. The Company was in compliance with these covenants as of September 30, 2009.

The Loan Agreement also contains events of default that include, among others, non-payment defaults, covenant defaults, a default in the event a material adverse change occurs, defaults in the event the Company s assets are attached or the Company is enjoined from doing business, bankruptcy and insolvency defaults, cross-defaults to certain other material indebtedness, material judgment defaults, inaccuracy of representations and warranties and a default in the event of a change of control. The occurrence of an event of default could result in an increase to the applicable interest rate of 5.00%, an acceleration of all obligations under the Loan Agreement, an obligation of the Company to repay all obligations in full, and a right by the Lender to exercise all remedies available to it under the Loan Agreement and related agreements including the Guaranty and Security Agreement.

NOTE 9 CONTINGENCIES

Contingencies

From time to time, the Company is involved in litigation relating to claims arising from the ordinary course of business. Management does not believe the final disposition of these matters will have a material adverse effect on the financial statements and future cash flows of the Company.

The Company advised Alma Lasers, Ltd. and Alma Lasers, Inc. (together Alma) in February 2006 that Alma s Accent product infringed numerous patents owned by the Company. On April 26, 2007, Alma filed a lawsuit against the Company in the United States District Court for the District of Delaware requesting declaratory judgment that Alma s Accent product does not infringe the Company s patents and that the Company s patents are invalid. Management believes that the Company has meritorious defenses in this action and intends to defend the action vigorously. On June 20, 2007, the Company filed counterclaims in the United States District Court for the District of Delaware asserting that Alma s Accent XL and Harmony devices infringe 10 U.S. patents of the Company. The counterclaim was amended on December 10, 2007 to include a claim of infringement of an eleventh patent. In addition to damages and attorney fees, the Company is asking the Court to enjoin Alma from further infringement. During May, June and July 2008, Alma filed with the United States Patent and Trademark Office requests that all of the 11 patents asserted by the Company be reexamined. The U.S. Patent Office has granted all these reexamination requests. Through September 30, 2009, the U.S. Patent Office has made rejections of some claims in each of these 11 patents. Management believes the U.S. Patent

Office will reaffirm the validity of the Company s patents. Management does not believe the final disposition of these matters will have a material adverse effect on the financial statements and future cash flows of the Company.

Table of Contents

Solta Medical, Inc.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(in thousands of dollars, except share and per share amounts)

(Unaudited)

Indemnifications

In the normal course of business, the Company enters into contracts and agreements that contain a variety of representations and warranties and provide for general indemnifications. The Company s exposure under these agreements is unknown because it involves future claims that may be made against the Company in the future, but have not yet been made. To date, the Company has not paid any claims or been required to defend any action related to its indemnification obligations. However, the Company may record charges in the future as a result of these indemnification obligations.

In accordance with its certificate of incorporation, bylaws and individual indemnification agreements, the Company has indemnification obligations to its officers and directors and certain key employees for certain events or occurrences, subject to certain limits, while they are serving at the Company s request in such a capacity. There have been no claims to date and the Company has a director and officer insurance policy that enables it to recover a portion of any amount paid for future claims.

NOTE 10 COMPREHENSIVE LOSS

Comprehensive income (loss) generally represents all changes in stockholders equity except those resulting from investments or contributions by stockholders. The Company s unrealized gain (loss) on marketable investments represents the only component of other comprehensive income (loss) that is excluded from net income (loss). The changes in components of comprehensive loss for the periods presented are as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Net loss	($6,246)	($1,146)	($10,936)	($1,344)
Unrealized loss on marketable investments, net of tax		(1,291)		(1,419)
Comprehensive loss	($6,246)	($2,437)	($10,936)	($2,763)

NOTE 11 STOCK-BASED COMPENSATION

Stock-based compensation expense is recognized using a fair-value based method for costs related to all share-based payments related to stock options granted to employees and non-employees, the Employee Stock Purchase Plan and restricted stock unit awards. The stock-based compensation expenses are allocated to cost of revenue, sales and marketing, research and development and general and administrative as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Stock Options	$ 732	$ 838	$ 2,211	$ 2,596
Employee Stock Purchase Plan	34	31	93	140
Restricted Stock Units	57	18	172	53

Total stock-based compensation expense	$ 823	$ 887	$ 2,476	$ 2,789

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Cost of revenue	$ 61	$ 47	$ 175	$ 143
Sales and marketing	316	352	993	1,124
Research and development	85	80	192	296
General and administrative	361	408	1,116	1,226
Total stock-based compensation expense	$ 823	$ 887	$ 2,476	$ 2,789

Table of Contents

ITEM 2. MANAGEMENT S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of the federal securities laws. These statements include, but are not limited to, those concerning our expectations that treatment tip sales will decrease as a percentage of revenue versus systems sales; introduction of new systems and procedures and associated treatment tips in the future; expansion of average selling price; sales organization growth; growth in international sales and expansion into new international markets; and our belief that our cash, cash equivalents and marketable investments, along with our ability to secure credit facilities will satisfy our anticipated cash requirements. These statements are subject to risks and uncertainties that could cause actual results and events to differ materially from those expressed or implied by such forward-looking statements. For a detailed discussion of these risks and uncertainties, see Risk Factors section in Item 1A of this Quarterly Report on Form 10-Q. We caution the reader not to place undue reliance on these forward-looking statements, which reflect management s analysis only as of the date of this Form 10-Q. We undertake no obligation to update forward-looking statements, which reflect events or circumstances occurring after the date of this Form 10-Q. We also encourage you to read the Critical Accounting Policies in Item 7 Management s Discussion and Analysis contained in Part II of our Annual Report on Form 10-K filed on March 31, 2009.

Overview

We design, develop, manufacture and market aesthetic energy devices to address aging skin. We were incorporated in 1996 and received FDA clearance for treatment of periorbital wrinkles and commercially launched our first Thermage system in 2002. In June 2004, we received FDA clearance for the treatment of facial wrinkles and rhytids. In December 2005, we received FDA clearance to market our system for the treatment of wrinkles and rhytids, without limitation to particular areas of the body. In October 2006, we received FDA clearance to market our system for the temporary improvement in the appearance of cellulite. In June 2007, we received clearance to market our system for treatment of wrinkles and rhytids for the upper and lower eyelids. In June 2009, we received FDA clearance to market our latest Thermage system and hand piece configuration for wrinkles, rhytides and for the temporary improvement in the appearance of cellulite. Our patented and FDA-cleared systems uses radiofrequency, or RF, energy to heat and shrink collagen and tighten tissue while simultaneously cooling and protecting the surface of the skin.

Laser devices used for aesthetic procedures, such as skin resurfacing, are also generally regulated as Class II medical devices, requiring 510(k) clearance. The FDA has granted eleven 510(k) clearances for four Fraxel devices relating to multiple indications for use. We received FDA clearance to market our first generation Fraxel SR750 system for coagulation of soft tissue in November 2003 and subsequently for treatment of periorbital wrinkles (June 2004), pigmented lesions (June 2004), melasma (March 2005), skin resurfacing procedures (July 2005) and acne and surgical scars (March 2006). In March 2006, we received FDA clearance to market our Fraxel re:store system for soft tissue coagulation and for treatment of periorbital wrinkles, pigmented lesions, melasma and skin resurfacing. We subsequently received FDA clearance for the Fraxel re:store for treatment of acne and surgical scars in January 2007 and for actinic keratoses in May 2007. In April 2007, we received FDA clearance to market the Fraxel re:fine system for soft tissue coagulation and for treatment of periorbital wrinkles, pigmented lesions, melasma, skin resurfacing, acne scars and surgical scars. The Fraxel re:pair system was cleared for ablation, coagulation and resurfacing of soft tissue in April 2007 and for treatment of wrinkles, pigmentation, textural irregularities and vascular dyschromia in November 2007. We received FDA clearance for two additional Fraxel re:pair handpieces in July 2008, which deliver ablative and incisional treatments for surgical applications. As of September 30, 2009, we had an installed base of approximately 2,800 Thermage systems and 2,200 Fraxel systems and had sold over 695,000 treatment tips.

On December 23, 2008, as described below, we acquired Reliant Technologies, Inc. (Reliant), a privately held company, for $25 million in cash, 23.6 million shares of our common stock and assumption of $9.4 million of debt, including a $5 million note payable to Thermage. The acquisition combined two companies with strong brand names with one of the largest direct U.S. sales forces in the industry. Following the acquisition, we changed our name to Solta Medical, Inc.

Net revenue for the nine months ended September 30, 2009 increased 49% from the nine months ended September 30, 2008, mainly from the contribution from the sale of products and services previously marketed by Reliant under the Fraxel brand name. Our business continued to be impacted by the weakness in global economic conditions and tightening of the credit markets, which resulted in a slowdown in customer purchase decisions. As our procedures are generally elective, the slowing economy reduced demand for our procedures. The tight credit markets limited the ability of some of our customers to obtain financing for the purchase of our products. In response to the continuing difficulties in the economy, we have implemented a number of initiatives in response to the tight worldwide credit market, including expanding our partner program to include Fraxel consumables as well as offering incentives to doctors who become both Fraxel and Thermage customers.

Table of Contents

Acquisition of Reliant Technologies, Inc.

On December 23, 2008, we acquired 100% of the common stock of Reliant for $25 million in cash and 23.6 million shares of Solta Medical common stock and assumption of $9.4 million of debt, including a $5 million note payable to Thermage. This acquisition expands the market presence of the Company. Complementary product offerings allow us to cross-sell a more complete product line to physicians and their patients through one of the largest direct U.S. sales forces in the industry and an expansive international distribution network.

The acquisition purchase price totaled a combined $25 million cash paid, $61.4 million for 23.6 million shares issued at the $2.60 share price on the date of announcement, $0.2 million fair value of assumed warrants and approximately $4.1 million in direct transaction costs.

We have recorded an estimate for costs to terminate some activities associated with the Reliant operations. The restructuring accrual of approximately $3.0 million at December 31, 2008 was principally related to the termination of 45 Reliant employees of approximately $1.8 million and restructuring of facilities of $1.2 million.

The valuation of identified intangible assets acquired was based on management s estimates, currently available information and reasonable and supportable assumptions. The allocation was based on the fair value of these assets determined using the income and market approaches. Of the total purchase price of approximately $90.6 million, approximately $41.1 million was allocated to amortizable intangible assets. Approximately $37.2 million of the amortizable intangible assets are being amortized using a straight-line method over their respective estimated useful lives of two to 12 years.

In conjunction with the acquisition of Reliant, we recorded an expense of approximately $9.1 million for acquired in-process research and development (IPR&D) during the quarter and year ended December 31, 2008, because feasibility of the acquired technology had not been established and no alternative future use exists. The IPR&D is related to the development of three new products, all of which are progressing as planned. We determined the value of acquired IPR&D using the discounted cash flow approach. We calculated the present value of the expected future cash flows attributable to the in-process technology using a 21% to 23% discount rate. The major risks and uncertainties associated with the timely and successful completion of these IPR&D projects include delays caused by legal actions brought by the Company s competitors and the timing of the receipt of necessary regulatory approvals. No assurances can be given that the underlying assumptions used to prepare the discounted cash flow analysis will not change or the timely completion of each project to commercial success will occur. For these and other reasons, actual results may vary significantly from estimated results.

We allocated the residual value of approximately $48 million to goodwill. Goodwill represents the excess of the purchase price over the fair value of the net tangible and intangible assets acquired. Goodwill is not amortized, but is tested for impairment on an annual basis or when events and circumstances indicate that the carrying amount of goodwill may not be recoverable. We did not have any goodwill prior to the acquisition of Reliant. We did not perform a test for goodwill impairment in 2008 as there were no underlying events and circumstances relative to the business which would support an immediate impairment of its acquired goodwill from the December 23, 2008 acquisition date to December 31, 2008. While there were no new events occurring in the short period between the acquisition date and December 31, 2008 that impacted our valuation of goodwill, we considered the fact that the publicly traded value of the Company was less than the carrying value, including goodwill, at December 31, 2008. We concluded that no impairment of goodwill existed at December 31, 2008 based upon factors including the Company s decision to proceed with the closing of the acquisition after the acquisition plan was announced, the short period of time elapsing since the acquisition date, the implied premium over the quoted market price of the Company s stock resulting from recent third-party acquisition proposals made for the Company prior to the acquisition of Reliant, the business reasons for executing the merger and the benefits that the Company expects to achieve, and management s expectations of the future operating and financial performance of the business. We extended these considerations through September 30, 2009 and concluded that no impairment of goodwill existed as of that date. Management will continue to monitor for any indicators that the carrying amount of goodwill may not be recoverable. The occurrence of adverse events or circumstances, including changes in management s expectations of the future financial performance of the business, may result in the Company recording a goodwill impairment charge in a future period.

Significant Business Trends

We derive revenue primarily from the sale of systems, treatment tips and consumables. For the years ended December 31, 2007 and 2008 and the nine months ended September 30, 2008 and 2009, we derived 71%, 73%, 73% and 50% respectively, of our revenue from treatment tips and consumable sales, and 26%, 24%, 24% and 40% respectively, of our revenue from system sales. The balance of our revenue is derived from product service, research and development and shipping.

19

Table of Contents

With the acquisition of Reliant, we have seen sales of treatment tips and consumables decrease as a percentage of Solta revenue versus system sales, and revenue derived from sales of products and services within the United States decrease as a percentage of total Solta revenue. During the second quarter of 2009, we announced the termination of the upgrade program for our first generation Thermage and Fraxel systems to the current versions of these systems. As a result, we experienced a high volume of system upgrade sales, which contributed to the increase in the proportion of revenue from system sales.

We market our products in the United States to physicians, including primarily dermatologists and plastic surgeons, through a direct sales force and internationally in over 100 countries through a network of independent distributors and direct sales force in a few select countries. In the years ended December 31, 2007 and 2008 and the nine months ended September 30, 2008 and 2009, we derived 52%, 52%, 51% and 44%, respectively, of our revenue from sales of our products and services within the United States, and 48%, 48%, 49% and 56%, respectively, of our total sales outside of the United States. We believe that a significant portion of our business will continue to come from international sales through increased penetration in countries where we currently sell our products, combined with expansion into new international markets. The percentages of our revenue by region are presented in the table below:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
United States	46%	51%	44%	51%
Asia Pacific	25%	27%	23%	25%
Europe/Middle East	22%	13%	25%	14%
Rest of the world	7%	9%	8%	10%
Total net revenue	100%	100%	100%	100%

We continue to believe our bifurcated sales force will serve us well. With the acquisition of Reliant, we have one of the largest direct U.S. sales forces in the industry, with about half of the sales force focusing on existing customers and sales of treatment tips, upgrades and training, and the remainder focusing on securing new accounts.

Future operating results are difficult to predict accurately. We anticipate that our quarterly results of operations may fluctuate for the foreseeable future due to several factors, including prevailing economic conditions and our customers access to the credit market, the timing of introduction and the degree of acceptance of future product offerings, unanticipated interruptions and expenses related to our manufacturing operations, and the performance of our direct sales force and international distributors.

We began introducing new products during the second half of 2009, the commercial success of which will depend upon the acceptance of these products by physicians and their patients. As new or enhanced products are introduced, we must successfully manage the transition from older products in order to minimize disruption in customers ordering patterns, avoid excessive levels of older product inventories, and ensure that enough supplies of new products can be delivered to meet customer demand. Revenue during the three months ended September 30, 2009 was adversely impacted by production delays on the new Thermage CPT system launched in August 2009. In addition, the regulatory review process for the Fraxel re:store Dual system continued throughout the quarter. As a result, the Company had been limited in performing demonstrations of these two new products to its customers.

Significant Industry Factors

The growth of our business relies on current economic conditions and their impact on the growth of the industry, our ability to continue to develop new products, applications and innovative technologies, obtain and maintain regulatory clearances for our products, protect our proprietary technology, and successfully market and distribute our products. Our industry is characterized by seasonally lower demand during the third calendar quarter of the year, when both physicians and prospective patients take summer vacations. Additionally, our industry is highly competitive and our success depends on our ability to compete successfully. Our business is sensitive to a number of factors that influence the levels of consumer spending, including political and economic conditions such as recessionary environments, the level of disposable consumer income, consumer debt, interest rates and consumer confidence. Declines in consumer spending on aesthetic procedures could have an adverse effect on our operating results. A detailed discussion of these and other factors that impact our business is provided in the Risk Factors section in this Quarterly Report on Form 10-Q.

20

Table of Contents

Results of Operations

Three and Nine Months Ended September 30, 2008 and 2009

Net Revenue. Revenue is derived from the sales of systems, treatment tips and other consumables, and service and other revenue. Net revenue increased $4.7 million, or 36%, from $13.0 million to $17.8 million for the three months ended September 30, 2008 and 2009, respectively, mainly from the contribution from Fraxel sales. However, Thermage and Fraxel sales were affected by the comparative weakening of global economic conditions, tightening of the credit market that resulted in a slowdown of customer purchasing decisions from the second half of 2008 and the production delays and ongoing regulatory review process during the quarter as discussed above.

System sales increased $3.1 million, or 110%, from $2.9 million to $6.0 million for the three months ended September 30, 2008 and 2009, respectively. Sales of treatment tips and other consumables decreased $0.2 million, or 3%, from $9.8 million to $9.6 million for the three months ended September 30, 2008 and 2009, respectively. The increases in systems sales were due to the contributions from the sale of Fraxel products. The decrease in tips and consumables is due to a slight decrease in Thermage tip revenue.

Net revenue increased $23.3 million, or 49%, from $47.1 million to $70.4 million for the nine months ended September 30, 2008 and 2009, respectively. System sales increased $16.8 million, or 146%, from $11.5 million to $28.4 million for the nine months ended September 30, 2008 and 2009, respectively. Sales of treatment tips and other consumables increased $0.6 million, or 2% from $34.4 million to $35.0 million for the nine months ended September 30, 2008 and 2009, respectively. These increases were due to the contributions from Fraxel sales, partially offset by a decrease in Thermage tip revenue.

Cost of Revenue. Our cost of revenue consists primarily of material, labor and manufacturing overhead expenses. Gross margin was 59% of revenue in the third quarter of 2009, compared with 75% of revenue in the third quarter of 2008. The decrease in gross margin as a percent of revenue in the third quarter of 2009 was primarily due to a higher proportion of lower-margin system sales than higher-margin tip sales, unfavorable overhead absorption due to lower than planned production volume, downward sales-pricing pressure caused by the continuing difficulties in the economy, $0.9 million of purchase price adjustments to cost of sales from the Reliant acquisition, including $0.7 million of amortization expense from intangible assets from the Reliant acquisition.

Gross margin was 58% of revenue in the first nine months of 2009, compared with 75% of revenue in the first nine months of 2008. The decrease in gross margin as a percent of revenue in the first nine months of 2009 was primarily due to a higher proportion of lower-margin system and system upgrade sales than higher-margin tip sales, unfavorable overhead absorption due to lower than planned production volume, downward sales-pricing pressure caused by the continuing difficulties in the economy, $4.9 million of purchase price adjustments to cost of sales from the Reliant acquisition, including $2.1 million of amortization expense from intangible assets from the Reliant acquisition.

Sales and Marketing. Sales and marketing expenses consist primarily of personnel costs and costs related to customer-attended workshops and trade shows and advertising, as well as marketing and customer service expenses. Sales and marketing expenses increased $3.0 million, or 51%, from $5.9 million to $9.0 million for the three months ended September 30, 2008 and 2009, respectively. The increase was primarily attributable to increased headcount and related personnel and travel and entertainment expenses of $1.6 million from the Reliant acquisition, an increase of $0.9 million in discretionary marketing expenses, an increase of $0.4 million in supplies, depreciation and allocated information technology and facility expenses, and $0.2 million of amortization of intangibles acquired in the Reliant acquisition.

Sales and marketing expenses increased $8.1 million, or 40% from $20.3 million to $28.5 million in the first nine months of 2008 and 2009, respectively. The increase in the first nine months of 2009 was primarily attributable to increased headcount and related personnel and travel and entertainment expenses of $3.8 million from the Reliant acquisition, an increase of $2.4 million in discretionary marketing expenses, an increase of $1.3 million in supplies, telecommunication, depreciation and allocated information technology and facility expenses, and $0.6 million of amortization of intangibles acquired in the Reliant acquisition.

Research and Development. Research and development expenses consist primarily of personnel costs, clinical and regulatory costs, material costs and regulatory and quality assurance costs not directly related to the manufacturing of our products. Research and development expenses increased $2.1 million, or 97%, from $2.2 million to $4.2 million for the three months ended September 30, 2008 and 2009, respectively. The increase in research and development expenses was primarily from increased headcount and related personnel and infrastructure expenses of $1.0 million, higher spending on clinical studies and other R&D project costs of $0.7 million, and $0.4 million higher depreciation and amortization expenses, including $0.1 million of amortization of intangibles acquired in the Reliant acquisition.

21

Table of Contents

Research and development expenses increased $5.1 million, or 72% from $7.1 million to $12.1 million in the first nine months of 2008 and 2009, respectively. Compared to the first nine months of 2008, employee payroll and related expenses increased $2.3 million, clinical studies and other R&D project costs increased $1.2 million, allocated information technology and facility expenses were higher by $0.8 million, and depreciation and amortization expenses were higher by $0.7 million, including $0.4 million of amortization of intangibles acquired from the Reliant acquisition.

General and Administrative. General and administrative expenses consist primarily of personnel costs, legal and accounting fees, human resources costs and other general operating expenses. General and administrative expenses increased $1.2 million, or 47%, from $2.6 million to $3.8 million for the three months ended September 30, 2008 and 2009, respectively. Professional fees increased $0.4 million, primarily due to increased outside accounting, tax and legal fees, employee payroll and related expenses increased $0.3 million, product liability and business insurance increased $0.3 million and bad debt expense increased by $0.2 million.

General and administrative expenses in the first nine months of 2009 was $11.6 million, an increase of $1.4 million, or 14%, compared with $10.2 million in the same period in 2008. The increase from the prior year period was due to an increase of $1.0 million in employee payroll and related expenses, an increase of $1.0 million in professional fees primarily due to increased outside accounting, tax and legal fees, and a $0.4 million increase in bad debt expense, partially offset by $1.0 million in merger related expenses incurred in 2008. During the first quarter of 2008, we reached an advanced stage of negotiations with a potential acquisition target and had performed significant due diligence on the project before negotiations were terminated. The $1.0 million in outside advisory fees incurred in the first quarter of 2008 in pursuing this acquisition did not recur in 2009.

Interest and Other Income. Interest and other income consist primarily of interest income generated from our cash, cash equivalents and marketable investments. Interest and other income decreased $0.4, or 69%, from $0.6 for the three months ended September 30, 2008 to $0.2 for the three months ended September 30, 2009, due to lower average cash and investment balances following our use of cash in the Reliant acquisition. These amounts were $1.8 million and $0.4 million in the first nine months of 2008 and 2009, respectively.

Interest and Other Expense. Interest and other expense consist primarily of interest expense resulting from borrowings on the margin account, line of credit and term loan during 2009, none of which existed in 2008. Interest and other expenses were $0.1 million and $0.3 million in the third quarter and the first nine months of 2009, respectively.

Gain (Loss) on Investments. During the quarter ended September 30, 2009, we realized a $0.2 million gain on investments that had either been sold or matured in our portfolio during the quarter. During the quarter ended September 30, 2008, a security in our investment portfolio suffered a substantial loss in fair market value. We determined that such loss in fair market value was other than temporary , and as a result, we recorded approximately $0.9 million other than temporary impairment loss on investments in the quarter ended September 30, 2008.

Provision (benefit) for Income Taxes. There was an income tax provision of $0.1 million and a benefit of $0.1 million for the three months ended September 30, 2008 and 2009, respectively, and a provision of $0.2 million and a benefit of $0.01 million for the nine months ended September 30, 2008 and 2009, respectively. The provision for income taxes for the three and nine months ended September 30, 2008 primarily represented additions to AMT taxes and additions to ASC 740 reserves, while the benefit for income taxes for the three and nine months ended September 30, 2009 primarily represented R&D credits, partially offset by additions to ASC 740 reserves. We did not recognize any tax benefits in relation to the loss before income taxes for the nine months ended September 30, 2009 as we maintained a full valuation allowance for deferred taxes.

Stock-Based Compensation

For the three and nine months ended September 30, 2008 and 2009, employee and non-employee stock-based compensation expense has been allocated as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Cost of revenue	$ 61	$ 47	$ 175	$ 143
Sales and marketing	316	352	993	1,124
Research and development	85	80	192	296
General and administrative	361	408	1,116	1,226

Total stock-based compensation expense	$ 823	$ 887	$ 2,476	$ 2,789

Table of Contents

Liquidity and Capital Resources

On September 30, 2009, we had working capital of $12.4 million, which included $14.7 million of cash and cash equivalents. In the fourth quarter of 2008, in anticipation of the acquisition of Reliant Technologies, Inc., we drew down on funds from a margin account with JP Morgan Chase, collateralized by our marketable investments. Pursuant to the terms of credit offered by JP Morgan Chase, we may borrow up to 75% of the market value of our investment account at an interest rate of the 30-day Libor rate plus 100 basis points. We had no marketable securities as of September 30, 2009, and accordingly, the margin account had a zero balance as of that date.

Our future capital requirements depend on a number of factors, including the rate of market acceptance of our current and future products, the resources we devote to developing and supporting our products, and continued progress of our research and development of new products.

We expect to increase capital expenditures consistent with our anticipated growth in manufacturing, infrastructure and personnel. We also may increase our capital expenditures as we expand our product lines or invest to address new markets.

We believe that our current cash and investment balances and cash generated from operations, along with the credit facilities made available to us in 2009 will meet our anticipated cash needs for working capital and capital expenditures for at least the next 12 months. We entered into a term loan and revolving loan agreement in March 2009, which was subsequently amended later in the same month and in June 2009. The agreement contains certain financial and non-financial covenants. Our future liquidity requirements may increase beyond currently expected levels if we fail to maintain compliance with such covenants or if we fail to achieve cost savings and synergies from the Reliant acquisition or if unanticipated expenses or other uses of our cash arise. In order to meet our future liquidity needs, we may become reliant on additional equity and/or debt financing. Such additional financing may not be available on a timely basis on terms acceptable to us, or at all, particularly in the short-term due to the current credit and equity market funding environments. The availability of financing or merger opportunities will depend, in part, on market conditions, and the outlook for our company. Any future equity financing would result in substantial dilution to our stockholders.

On March 9, 2009, we entered into a Loan and Security Agreement with Silicon Valley Bank for a $6.0 million secured revolving loan facility and a $3.0 million secured term loan. We drew down $3.8 million on the revolving loan facility and $3.0 million as a term loan in March 2009, and repaid the revolving loan in full in April 2009. On June 30, 2009, we entered into an amendment to the Loan Agreement which provides for an increase of the secured revolving loan facility to $8.0 million and an additional $1.0 million secured term loan. On June 30, 2009, the Company drew down $5.2 million on the revolving loan facility and $1.0 million as a term loan and repaid the revolving loan in full in July 2009. In September 2009, the Company drew down $6.0 million on the revolving loan facility. Borrowings under the revolving loan facility accrue interest at prime plus 1.00% per annum, subject to a minimum of 5.00% per annum. Borrowings under the term loans accrue interest at an effective rate of 6.39% per annum. Interest on borrowings under the revolving loan facility is payable monthly. The term loans are payable in 33 equal monthly payments of principal and interest. The revolving loan facility and term loans subject the Company to certain financial and non-financial covenants and the bank has a first security interest in all of the Company s assets including intellectual property. We were in compliance with these covenants as of September 30, 2009.

Net Cash Provided by (Used in) Operating Activities. Net cash used in operating activities was $5.3 million in the nine months ended September 30, 2009, compared to net cash of $1.4 million provided by operating activities in the nine months ended September 30, 2008. During the first nine months of 2009, cash was used to fund an increase of $4.0 million in accounts receivable that was primarily due to increased revenue and a higher percentage of sales late in the period, a decrease of $3.4 million in accrued restructuring, and a $1.9 million decrease in accounts payable. These were partially offset by $4.6 million of cash provided by a decrease in inventory, a $1.0 million increase in accrued and other liabilities, $0.9 million increase in prepaid expenses and other current assets and $3.4 million net cash provided from net loss after adjusting for non-cash items. The decrease in inventory during the first nine months of 2009 was primarily due to sales during the period supplemented by tighter management of inventory purchases.

During the first nine months of 2008, $3.6 million of net cash was provided from net loss after adjusting for non-cash items. Such amount was used to fund an increase of $1.1 million in accounts receivable, as well as to fund a decrease of $1.3 million in accrued and other liabilities. The increase in accounts receivable was due to a higher percentage of sales volume that occurred towards the latter part of the third quarter, as well as the impact of providing 30 days payment terms to certain U.S. customers under our Infinity Program in 2008. The decrease in accrued and other liabilities was primarily due to payment of annual bonus and professional fees.

Table of Contents

Net Cash Provided by Investing Activities. Net cash provided by investing activities was $15.4 million for the nine months ended September 30, 2009 compared with $5.5 million in the nine months ended September 30, 2008. Net cash of $18.0 million was provided by the sale or maturities of our marketable investments in the first nine months of 2009, partially offset by $1.1 million of payments of transaction costs, net of escrow settlement relating to the Reliant acquisition and $1.5 million of payments for acquisitions of property and equipment. Net cash provided by investing activities in the first nine months of 2008 of $5.5 million was due to $11.5 million net sales of marketable investments, partially offset by the acquisition of property and equipment. In connection with our proposed acquisition of Reliant Technologies, Inc. in 2008, we began to liquidate our marketable investments and we provided a $5.0 million bridge loan to Reliant and incurred $0.3 million in acquisition costs.

Net Cash Provided by (Used in) Financing Activities. Net cash used in financing activities was $2.9 million in the nine months ended September 30, 2009 compared with $0.7 million of net cash provided in the nine months ended September 30, 2008. During the first nine months of 2009, we made net borrowings of $9.4 million in term loans and under the line of credit from Silicon Valley Bank, and repaid $12.4 million on the margin account maintained with JP Morgan Chase related to our marketable investments. During the first nine months of 2008, cash was provided by proceeds from exercise of stock options and employee stock purchase plan.

Off-Balance Sheet Arrangements

We do not have any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. In addition, we do not have any undisclosed borrowings or debt, and we have not entered into any synthetic leases. We are, therefore, not materially exposed to any financing, liquidity, market or credit risk that could arise if we engaged in such relationships.

Recent Accounting Pronouncements

In December 2007, ASC 805, *Business Combinations* (ASC 805) was revised. This revision changes the accounting for business combinations including the measurement of acquirer shares issued in consideration for a business combination, the recognition of contingent consideration, the accounting for preacquisition gain and loss contingencies, the recognition of capitalized in-process research and development, the accounting for acquisition-related restructuring cost accruals, the treatment of acquisition-related transaction costs and the recognition of changes in the acquirer s income tax valuation allowance. ASC 805 is effective for fiscal years beginning after December 15, 2008, with early adoption prohibited. Additionally, in February 2009, ASC 805-20-35-3, *Accounting for Assets Acquired and Liabilities Assumed in a Business Combination That Arise from Contingencies*, will amend the provisions related to the initial recognition and measurement, subsequent measurement and disclosure of assets and liabilities arising from contingencies in a business combination under ASC 805. The Company adopted ASC 805-20-35-3 on January 1, 2009 and will apply this new accounting standard for future business combinations.

In December 2007, ASC 810-10-65-1, *Non-controlling Interests in Consolidated Financial Statements,* was amended. This amendment changes the accounting for non-controlling (minority) interests in consolidated financial statements including the requirements to classify non-controlling interests as a component of consolidated stockholders equity, and the elimination of minority interest accounting in results of operations with earnings attributable to non-controlling interests reported as part of consolidated earnings. Additionally, ASC 810-10-65-1 revises the accounting for both increases and decreases in a parent s controlling ownership interest. ASC 810-10-65-1 is effective for fiscal years beginning after December 15, 2008, with early adoption prohibited. The Company s adoption of ASC 810-10-65-1 on January 1, 2009 did not have a material impact on the Company s financial position, results of operations or cash flows.

In February 2008, ASC 820-10-15-1A was amended, which delayed the effective date of ASC 820, *Fair Value Measurements and Disclosures*, for all non-financial assets and non-financial liabilities, except for items that are recognized or disclosed at fair value in the financial statements on a recurring basis (at least annually), until the beginning of the first quarter of fiscal year 2009. The Company s adoption of 820-10-15-1A on January 1, 2009 did not have a material impact on the Company s financial position, results of operations or cash flows.

Table of Contents

In April 2008, ASC 350-30-65-1, *Determination of the Useful Life of Intangible Assets* (ASC 350-30-65-1), amended the factors considered in developing renewal or extension assumptions used to determine the useful life of a recognized intangible asset under ASC 350, *Intangibles-Goodwill and Other,* ASC 350-30-65-1 requires a consistent approach between the useful life of a recognized intangible asset under ASC 350 and the period of expected cash flows used to measure the fair value of an asset under ASC 805. ASC 350-30-65-1 also requires enhanced disclosures when an intangible asset s expected future cash flows are affected by an entity s intent and/or ability to renew or extend the arrangement. ASC 350-30-65-1 is effective for financial statements issued for fiscal years beginning after December 15, 2008 and is applied prospectively. Early adoption is prohibited. The Company s adoption of ASC 350-30-65-1 on January 1, 2009 did not have a material impact on the Company s financial position, results of operations or cash flows.

In June 2008, ASC 815-10-65-3, *Determining Whether an Instrument (or Embedded Feature) is Indexed to an Entity s Own Stock*, provides guidance for determining whether an equity-linked financial instrument (or embedded feature) is indexed to an entity s own stock, which would qualify as a scope exception under ASC 815-10-15-74(a), *Accounting for Derivative Instruments and Hedging Activities*. ASC 815 is effective for fiscal years beginning after December 15, 2008 and early adoption for an existing instrument is not permitted. The Company s adoption of ASC 815 on January 1, 2009 did not have a material impact on the Company s financial position, results of operations or cash flows.

In April 2009, ASC 820-10-65-4, *Determining Fair Value When the Volume and Level of Activity for the Asset or Liability Have Significantly Decreased and Identifying Transactions That Are Not Orderly*, provided additional guidance for estimating fair value in accordance with ASC 820, *Fair Value Measurements and Disclosures*, when the volume and level of activity for the asset or liability have significantly decreased. This ASC also includes guidance on identifying circumstances that indicate a transaction is not orderly. This ASC emphasizes that even if there has been a significant decrease in the volume and level of activity for the asset or liability and regardless of the valuation technique(s) used, the objective of a fair value measurement remains the same. Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction (that is, not a forced liquidation or distressed sale) between market participants at the measurement date under current market conditions. ASC 820-10-65-4 is effective for interim and annual reporting periods ending after June 15, 2009, and is applied prospectively. Accordingly, the Company adopted the provisions of ASC 820-10-65-4 on April 1, 2009. The adoption of this guidance did not have a material impact on the Company s financial position, results of operations or cash flows.

In April 2009, ASC 825-10-65-1, *Interim Disclosures about Fair Value of Financial Instruments*, was revised to require disclosures about fair value of financial instruments in interim as well as annual financial statements. This standard is effective for periods ending after June 15, 2009. Accordingly, the Company adopted the provisions of ASC 825-10-65-1 on April 1, 2009. The adoption of this guidance did not have a material impact on the Company s financial position, results of operations or cash flows. However, the provisions of ASC 825-10-65-1 result in additional disclosures with respect to the fair value of the Company s financial instruments.

In June 2009, ASC 105, *Generally Accepted Accounting Principles,* was issued. ASC 105 relates to the Financial Accounting Standards Board (FASB) Accounting Standards Codification (Codification), which organizes thousands of U.S. GAAP pronouncements under approximately 90 accounting topic areas. The ASC states that the Codification will become the single source for all authoritative GAAP recognized by the ASC to be applied for financial statements issued for periods ending after September 15, 2009. The Codification does not change GAAP and did not have an affect on the Company s financial position, results of operations or cash flows.

In October 2009, the FASB issued Accounting Standards Update (ASU), 2009-13, Revenue Recognition (Topic 605): *Multiple Deliverable Revenue Arrangements A Consensus of the FASB Emerging Issues Task Force.* This update provides application guidance on whether multiple deliverables exist, how the deliverables should be separated and how the consideration should be allocated to one or more units of accounting. This update establishes a selling price hierarchy for determining the selling price of a deliverable. The selling price used for each deliverable will be based on vendor-specific objective evidence, if available, third-party evidence if vendor-specific objective evidence is not available, or estimated selling price if neither vendor-specific or third-party evidence is available. The Company will be required to apply this guidance prospectively for revenue arrangements entered into or materially modified after January 1, 2011; however, earlier application is permitted, as early as interim periods ended September 30, 2009. The Company has not determined the impact that this update may have on its financial statements.

Table of Contents

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Although, currently, most of our sales and purchases are denominated in U.S. dollars, future fluctuations in the value of the U.S. dollar may affect the price competitiveness of our products. We do not believe, however, that we currently have significant direct foreign currency exchange rate risk and have not hedged exposures denominated in foreign currencies.

ITEM 4T. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures. Our management evaluated, with the participation of our Chief Executive Officer and our Chief Financial Officer, the effectiveness of our disclosure controls and procedures (as defined in Rule 13a-15(e) of the Exchange Act of 1934, as amended) as of the end of the period covered by this Quarterly Report on Form 10-Q. Based on this evaluation, our Chief Executive Officer and our Chief Financial Officer have concluded that our disclosure controls and procedures are effective to ensure that information we are required to disclose in reports that we file or submit under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported within the time periods specified in Securities and Exchange Commission rules and forms, and that such information is accumulated and communicated to management including our Chief Executive Officer and our Chief Financial Officer as appropriate to allow for timely decisions regarding required disclosure.

Changes in Internal Control Over Financial Reporting. There was no change in our internal control over financial reporting (as defined in Rule 13a-15(f) of the Exchange Act) that occurred during the period covered by this Quarterly Report on Form 10-Q that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

We advised Alma Lasers, Ltd. and Alma Lasers, Inc. (together, Alma) as early as February 2006 that its Accent product infringed numerous Thermage patents.

On April 26, 2007, Alma filed a lawsuit against us in the United States District Court for the District of Delaware requesting declaratory judgment that Alma s Accent product does not infringe Thermage s patents and that Thermage s patents are invalid. We believe that we have meritorious defenses in this action and intend to defend the action vigorously.

On June 20, 2007, we filed patent infringement counterclaims against Alma in the United States District Court for the District of Delaware asserting that Alma s Accent^{XL} and Harmony systems infringe 10 Thermage U.S. patents. The counterclaims were amended on December 10, 2007 to include a claim of infringement of an eleventh Thermage patent. In addition to damages and attorney fees, we are asking the Court to enjoin Alma from further infringement. During May, June and July 2008, Alma filed with the United States Patent and Trademark Office requests that all of the 11 patents asserted by us be reexamined. The United States Patent and Trademark Office has made rejections of some claims in each of these 11 patents. We believe the United States Patent and Trademark Office will reaffirm the validity of our patents. We do not believe the final disposition of these matters will have a material adverse effect on our financial statements and future cash flows.

Table of Contents

ITEM 1A. RISK FACTORS

Risks Related to Our Business

We are in a difficult economic period, and the uncertainty in the economy has reduced and may continue to reduce patient demand for our products; if there is not sufficient patient demand for Thermage or Fraxel procedures, practitioner demand for our Thermage and Fraxel systems could drop, resulting in unfavorable operating results.

Recent distress in the financial markets has had an adverse impact on our business. The aesthetic treatment system industry in which we operate is particularly vulnerable to economic trends. The decision to undergo a Thermage or Fraxel procedure is driven by consumer demand. Most procedures performed using our Thermage and Fraxel systems are elective procedures, the cost of which must be borne by the patient, and are not reimbursable through government or private health insurance. In times of economic uncertainty or recession, individuals often reduce the amount of money that they spend on discretionary items, including aesthetic procedures. The general economic difficulties being experienced by our customers and the lack of availability of consumer credit for some of our customers are adversely affecting the market in which we operate.

If the current situation continues or deteriorates further, our business would be negatively impacted and our financial performance would be materially harmed in the event that any of the above factors discourage patients from seeking Thermage or Fraxel procedures.

We are totally dependent upon the success of our Thermage and Fraxel systems, which have a limited commercial history. If our products fail to achieve sufficient market acceptance, our business will suffer.

We expect that sales of our Thermage and Fraxel systems, including our treatment tips, will account for substantially all of our revenue for the foreseeable future. We expect to continue to expand our line of systems and treatment tips. This may not occur when expected, or at all, which would negatively affect our anticipated revenue. Our Thermage and Fraxel systems may not significantly penetrate current or new markets. If demand for our Thermage and Fraxel systems does not increase as we anticipate, or declines, our business, financial condition and results of operations will be harmed.

Our financial results may fluctuate unpredictably, making it difficult to forecast future performance.

Our limited operating history makes it difficult for us to predict future performance. Historically, the demand for our Thermage and Fraxel systems has varied from quarter to quarter. A number of factors, over which we have limited or no control, may contribute to fluctuations in our financial results, such as:

- delays in receipt of anticipated purchase orders;
- seasonal variations in patient demand for aesthetic procedures;
- the impact of general economic conditions on the demand for aesthetic procedures;
- performance of our independent distributors;
- the lack of credit available to physicians to finance capital equipment purchases;
- positive or negative media coverage of our products or products of our competitors or our industry;
- our ability to obtain further regulatory clearances or approvals;

delays in, or failure of, product and component deliveries by our subcontractors and suppliers;

changes in the length of the sales process;

customer response to the introduction of new product offerings;

fluctuations in foreign currency; and

excess or obsolete inventory charges.

Table of Contents

Our success depends on growing physician adoption of our Thermage and Fraxel systems and continued use of our treatment tips.

Our target physician customers typically already own one or more aesthetic device products. Our ability to grow our business and convince physicians to purchase our systems products depends on the success of our clinical and sales and marketing efforts. Our business model involves both a capital equipment purchase of our Thermage and Fraxel systems and continued purchases by our customers of our treatment tips. This may be a novel business model for many potential customers who may be used to competing products that are either exclusively capital equipment, such as many laser-based systems, or that are exclusively single-use products, such as Botox or dermal fillers. In addition, the lack of credit available to physicians to finance the purchase of Thermage and Fraxel systems may also impact the adoption of our Thermage and Fraxel systems. We must be able to demonstrate that the cost of our Thermage and Fraxel systems and the revenue that the physician can derive from performing procedures using our product are compelling when compared to the cost and revenue associated with alternative products. When marketing to plastic surgeons, we must also, in some cases, overcome a bias against non-invasive or minimally invasive aesthetic procedures. If we are unable to increase physician adoption of our Thermage and Fraxel systems and use of our treatment tips, our financial performance will be adversely affected.

We may be required to raise additional capital and or debt financing on unfavorable terms.

Our future liquidity requirements may increase beyond currently expected levels if we fail to achieve sustained profitability or if unanticipated expenses or other uses of cash arise. In order to meet our liquidity needs, we may be required to seek additional equity and/or debt financing. Additional financing may not be available on a timely basis on terms acceptable to us, or at all, particularly in the short-term due to the current credit and equity market funding environments. The availability of financing will depend, in part, on market conditions, and the outlook for our company. Any future equity financing would result in substantial dilution to our stockholders. If we raise additional funds by issuing debt, we may be subject to limitations on our operations, through debt covenants or other restrictions. If adequate funds are not available, we may have to delay development of new products or reduce marketing, customer support or other resources devoted to our products. In addition, if we are unable to obtain financing as needed, we may come into breach of our outstanding loan covenants. Any of these factors could harm our business and financial condition.

We may not be able to achieve or sustain profitability even if we are able to generate significant revenue.

We incurred a loss of $16.4 million in the year ended December 31, 2008 and a loss of $10.9 million for the nine months ended September 30, 2009. In the past, we have expanded our business and increased our expenses in order to grow revenue. We will have to increase our revenue while effectively managing our expenses in order to achieve sustained profitability. Our failure to achieve or sustain profitability could negatively impact the market price of our common stock.

We may not be successful in selling and marketing our new products.

The commercial success of the products and technologies we develop will depend upon the acceptance of these products by physicians and their patients. It is difficult for us to predict how successful recently introduced products and procedures including the Thermage CPT system and Fraxel re:store Dual system, or products we are currently developing, will be over the long term. If the products we develop do not gain market acceptance, our revenues and operating results will suffer. In addition, we expect to face significant competition, in some cases from companies that are more established, market more widely known products and have greater resources than we do. We may not be able to differentiate our new products sufficiently from our competitors products to achieve significant market penetration. As a result of these factors, we may incur significant sales and marketing expenses for our new products without achieving commercial success, which could harm our business and our competitive position.

In addition, as new or enhanced products are introduced, we must successfully manage the transition from older products in order to minimize disruption in customers ordering patterns, avoid excessive levels of older product inventories, and ensure that enough supplies of new products can be delivered to meet customer demand.

Table of Contents

The failure of our systems to meet patient expectations or the occurrence of unpleasant side effects from the Thermage and Fraxel procedures could impair our financial performance.

Our future success depends upon patients having a positive experience with the Thermage or Fraxel procedures in order to increase physician demand for our products, as a result of both individual patients repeat business and as a result of word-of-mouth referrals. We believe that patients may be dissatisfied with the Thermage or Fraxel procedures if they find it to be too painful. Furthermore, patients may experience temporary swelling or reddening of the skin as a procedure side effect. In rare instances, patients may receive burns, blisters, skin discoloration or skin depressions. Experiencing excessive pain or any of these side effects or adverse events could discourage a patient from having a Thermage or Fraxel procedure or discourage a patient from having additional procedures or referring Thermage and Fraxel procedures to others. In order to generate repeat and referral business, we also believe that patients must be satisfied with the effectiveness of the procedures. Results obtained from a Thermage or Fraxel procedure are subjective and may be subtle. A Thermage or Fraxel treatment may produce results that may not meet patients expectations. If patients are not satisfied with the procedure or feel that it is too expensive for the results obtained, our reputation and future sales will suffer.

The conditions of our secured term loan contain certain financial covenants with respect to our performance and other covenants that restrict our activities. If we are unable to comply with these covenants, we would have to negotiate an amendment to the loan agreement or the lender could accelerate the repayment of our indebtedness.

Our secured term loan contains certain financial covenants which require us to maintain specified levels of positive EBITDA and tangible net worth (both as defined in the loan agreement) each fiscal quarter. We are also subject to restrictive covenants, including among others covenants that restrict our ability to incur additional indebtedness, to dispose of assets, to effect certain corporate transactions, including specified mergers or acquisitions, and to pay dividends. The loan agreement generally provides for customary events of default, including among others non-payment defaults, covenant defaults, and a default in the event a material adverse change occurs. There is no assurance that we will be able to comply with our financial covenants. Upon the occurrence of an event of default under the term loan, the lender will be entitled to acceleration of all obligations under the loan agreement and an obligation to repay all obligations in full and such event of default could result in an increase to the applicable interest rate of 5.00%. Any acceleration in the repayment of our indebtedness could adversely affect our business.

Any acquisitions that we make could disrupt our business and harm our financial condition.

Our growth strategy includes evaluation of potential strategic acquisitions of complementary businesses, products or technologies. We may also consider joint ventures and other collaborative projects. We have incurred integration costs related to the acquisition of Reliant. We may incur similar expenses in future periods as we complete our integration plan, as well as expenses associated with evaluation of other potential strategic transactions. Such expenditures could negatively impact our financial performance in future periods.

We may not be able to successfully integrate the combined business, products or technologies. In addition, the integration of such acquisition and management of any collaborative project may divert management s time and resources from our core business and disrupt our operations. If we decide to expand our product offerings, we may spend time and money on projects that do not increase our revenue. Any cash acquisition we pursue would diminish funds available to us for other uses, and any stock acquisition would dilute our stockholders ownership. While we from time to time evaluate potential collaborative projects and acquisitions of businesses, products and technologies, and anticipate continuing to make these evaluations, we have no present understandings, commitments or agreements with respect to any other acquisitions or collaborative projects.

We may fail to effectively build and manage our sales force or to market and distribute our products.

We rely on a direct sales force to sell our products in the United States and in certain international regions. As the Company grows, we expect to grow or realign our sales organization to meet our anticipated sales objectives. There are significant risks involved in building and managing our sales organization, including risks related to our ability to:

- hire qualified individuals as needed;
- provide adequate training for the effective sale of our products; and

retain and motivate our sales employees.

Table of Contents

In addition, sales to non-traditional practitioners of aesthetic procedures is a key element of our growth strategy. However, our sales force historically has sold primarily to dermatologists and plastic surgeons. Also, our systems compete with products that are well-established in the market. Accordingly, it is difficult for us to predict how well our sales force will perform. Our failure to adequately address these risks could have a material adverse effect on our ability to sell our products, causing our revenue to be lower than expected and harming our results of operations.

We are involved in intellectual property litigation, which could be costly and time consuming, and may impact our future business and financial performance.

We advised Alma Lasers Ltd. and Alma Lasers, Inc. (together Alma) as early as February 2006 that Alma s Accent product infringed numerous Thermage patents. On April 26, 2007 Alma filed a lawsuit against us in the United States District Court for the District of Delaware requesting a declaratory judgment that Alma s Accent product does not infringe our patents and that our patents are invalid. We believe that we have meritorious defenses in this action and intend to defend the action vigorously. On June 20, 2007, we filed patent infringement counterclaims against Alma in the United States District Court for the District of Delaware asserting that that Alma s AccentXL and Harmony systems infringe ten of our U.S. patents. The counterclaims were amended on December 10, 2007 to include a claim of infringement of an eleventh patent. In addition to damages and attorney fees, we are asking the Court to enjoin Alma from further infringement. During May, June and July 2008, Alma filed with the United States Patent and Trademark Office requests that all of the 11 patents asserted by us be reexamined. The United States Patent and Trademark Office has made rejections of some claims in each of these 11 patents. We believe the United States Patent and Trademark Office will reaffirm the validity of our patents. Although we do not believe the final disposition of these matters will have a material adverse effect on our financial statements and future cash flows, our intellectual property has not been tested at trial. If we initiate litigation to protect our rights, we run the risk of having our patents invalidated, which would undermine our competitive position.

Litigation related to infringement and other intellectual property claims, with or without merit, is unpredictable, can be expensive and time-consuming and could divert management s attention from our core business. If we lose this kind of litigation, a court could require us to pay substantial damages, and prohibit us from using technologies essential to our products, any of which would have a material adverse effect on our business, results of operations and financial condition. We do not know whether necessary licenses would be available to us on satisfactory terms, or whether we could redesign our products or processes to avoid infringement.

Our industry has been characterized by frequent intellectual property litigation. Our competitors or other patent holders may assert that our products and the methods we employ are covered by their patents. If our products or methods are found to infringe, we could be prevented from marketing them. In addition, we do not know whether our competitors or potential competitors have applied for, or will apply for or obtain, patents that will prevent, limit or interfere with our ability to make, use, sell, import or export our products. Competing products may also appear in other countries in which our patent coverage might not exist or be as strong. If we lose a foreign patent lawsuit, we could be prevented from marketing our products in one or more countries.

In addition, we may hereafter become involved in litigation to protect our trademark rights associated with our company name or the names used with our products. Names used with our products and procedures may be claimed to infringe names held by others or to be ineligible for proprietary protection. If we have to change the name of our company or products, we may experience a loss in goodwill associated with our brand name, customer confusion and a loss of sales.

Intellectual property rights may not provide adequate protection for our products, which may permit third parties to compete against us more effectively.

We rely on a combination of patent, copyright, trademark and trade secret laws and confidentiality and invention assignment agreements to protect our intellectual property rights. As of September 30, 2009, we had 71 issued U.S. patents, 79 pending U.S. patent applications, 47 issued foreign patents and 92 pending foreign patent applications, some of which foreign applications preserve an opportunity to pursue patent rights in multiple countries. Some of our system components are not, and in the future may not be, protected by patents. Additionally, our patent applications may not issue as patents or, if issued, may not issue in a form that will be advantageous to us. Any patents we obtain may be challenged, invalidated or legally circumvented by third parties. Consequently, competitors could market products and use manufacturing processes that are substantially similar to, or superior to, ours. We may not be able to prevent the unauthorized disclosure or use of our technical knowledge or other trade secrets by consultants, vendors, former employees or current employees, despite the existence generally of confidentiality agreements and other contractual restrictions. Monitoring unauthorized uses and disclosures of our intellectual property is difficult, and we do not know whether the steps we have taken to protect our intellectual property will be effective. Moreover, we do not have patent rights in all foreign countries in which a market may exist, and where we have applied for foreign patent rights, the laws of many foreign countries will not protect our intellectual property rights to the same extent as the laws of the United States.

30

Table of Contents

In addition, competitors could purchase our systems and attempt to replicate some or all of the competitive advantages we derive from our development efforts, willfully infringe our intellectual property rights, design around our protected technology or develop their own competitive technologies that fall outside of our intellectual property rights. If our intellectual property is not adequately protected so as to protect our market against competitors products and methods, our competitive position could be adversely affected, as could our business.

Performing clinical studies on, and collecting data from, the Thermage or Fraxel procedures is inherently subjective, and we have limited data regarding the efficacy of our systems. If future data is not positive or consistent with our prior experience, rates of physician adoption will likely be harmed.

We believe that in order to significantly grow our business, we will need to conduct future clinical studies of the effectiveness of our Thermage and Fraxel systems. Clinical studies of aesthetic treatments are subject to a number of limitations. First, these studies do not involve well-established objective standards for measuring the effectiveness of treatment. Subjective, before and after, evaluation of the extent of change in the patient s appearance, performed by a medical professional or by the patient, is the most common method of evaluating effectiveness. A clinical study may conclude that a treatment is effective even if the change in appearance is subtle and not long-lasting. Second, as with other non-invasive or minimally invasive energy-based devices, the effect of the Thermage and Fraxel procedures vary from patient to patient and can be influenced by a number of factors, including the area of the body being treated, the age and skin laxity of the patient and operator technique.

We have not conducted any head-to-head clinical studies that compare results from treatment with our systems to surgery or treatment with other aesthetic devices. Without head-to-head studies against competing alternative treatments, which we have no current plans to conduct, potential customers may not find clinical studies of our technology sufficiently compelling to purchase our Thermage and Fraxel systems. If we decide to pursue additional studies in the future, they could be expensive and time consuming, and the data collected may not produce favorable or compelling results. If the results of such studies do not meet physicians expectations, our Thermage and Fraxel systems may not become widely adopted, physicians may recommend alternative treatments for their patients, and our business may be harmed.

To successfully market and sell our systems internationally, we must address many issues with which we have limited experience.

International sales accounted for 48% of our revenue for each of the years ended December 31, 2007 and 2008, and 56% of our revenue for the nine months ended September 30, 2009. We believe that a significant portion of our business will continue to come from international sales through increased penetration in countries where we currently sell our products, combined with expansion into new international markets. However, international sales are subject to a number of risks, including:

- difficulties in staffing and managing our international operations;
- difficulties in penetrating markets in which our competitors products are more established;
- reduced or no protection for intellectual property rights in some countries;
- export restrictions, trade regulations and foreign tax laws;
- regulation of the sale of the hydroflurocarbon used with our ThermaCool system;
- fluctuating foreign currency exchange rates;
- foreign certification and regulatory clearance or approval requirements;

- difficulties in developing effective marketing campaigns for unfamiliar, foreign countries;
- customs clearance and shipping delays;
- political and economic instability; and
- preference for locally produced products.

If one or more of these risks were realized, it could require us to dedicate significant resources to remedy the situation, and if we are unable to find a solution, our revenue may decline.

Table of Contents

To market and sell our products internationally, we depend on distributors, and they may not be successful.

We currently depend primarily on third-party distributors to sell and service our products internationally and to train our international customers, and if these distributors terminate their relationships with us or under-perform we may be unable to maintain or increase our level of international revenue. We will also need to engage additional international distributors to grow our business and expand the territories in which we sell our systems. Distributors may not commit the necessary resources to market, sell and service our products to the level of our expectations. If current or future distributors do not perform adequately, or if we are unable to engage distributors in particular geographic areas, our revenue from international operations will be adversely affected.

New legislation regarding healthcare reform may affect our revenue and financial condition.

The U.S. government is currently considering and may in the future consider healthcare policies and proposals intended to curb rising costs, including those that could significantly affect both private and public reimbursement for healthcare services. State and local governments, as well as a number of foreign governments, are also considering or have adopted similar types of policies. Such policies and proposals include changes that would change the dynamics of the health care industry, including having the federal or one or more state governments assume a larger role in the health care system such as competing with private health insurers, imposing new taxes on health insurers, or restructuring of the Medicare or Medicaid programs. It is unclear which, if any, of the various U.S. healthcare reforms currently being discussed and/or proposed might be enacted by the U.S. Congress and signed into law. We are unable to predict what healthcare reform legislation or regulations, if any, will be enacted in the U.S.; whether other healthcare legislation or regulations affecting our business may be proposed or enacted in the future; what effect any legislation or regulation would have on our business; or the effect ongoing uncertainty about these matters will have on the purchasing decisions of our customers.

We may face problems with our recent acquisition of Reliant Technologies, Inc.

On December 23, 2008, we announced the completion of our acquisition of privately held Reliant Technologies, Inc., or Reliant, a medical device company, for approximately $25 million in cash, 23.6 million shares of our common stock and the assumption of up to $9.4 million of debt. We cannot be certain that the acquisition of Reliant will be successful or that we will realize the anticipated benefits of the acquisition. In particular, we may not be able to successfully integrate the Reliant management team and employees or realize the strategic and operational benefits and objectives we had anticipated, including, greater revenue and market opportunities, maintaining industry leadership and consistent profitability. In addition, the demand for our combined product offerings may fluctuate and we may face increased competition into the markets for our products. Any of these factors and the following factors, as well as the inability to realize the anticipated efficiencies and synergies of the acquisition of Reliant, may have a material adverse effect on our business, operating results and financial condition. These factors may include:

- the potential disruption of the combined company s ongoing business and diversion of management resources;
- the possibility that the business cultures are not compatible;
- the difficulty of incorporating acquired products, technology and rights into the combined company s products and services;
- unanticipated expenses related to integration of operations;
- the impairment of relationships with employees and customers as a result of any integration of new personnel;
- potential unknown liabilities associated with the acquired business and technology;
- potential periodic impairment of goodwill and intangible assets acquired;

costs and delays in implementing common systems and procedures, including financial accounting systems and customer information systems; and

potential inability to retain, integrate and motivate key management, marketing, technical sales and customer support personnel.

Table of Contents

We compete against companies that have more established products, longer operating histories and greater resources, which may prevent us from achieving significant market penetration or increased operating results.

The aesthetics market is highly competitive and dynamic, and is marked by rapid and substantial technological development and product innovations. Demand for our products could be diminished by equivalent or superior products and technologies offered by competitors. Specifically, our products compete against a variety of offerings in the aesthetics market, including laser and other light-based medical devices, pharmaceutical products such as Botox, filler injections, chemical peels, microdermabrasion, liposuction, cosmetic surgical procedures and less invasive surgical solutions such as implanted sutures. Our closest competitors are makers of laser and other light-based devices, which include companies such as Alma Lasers, Candela, Cutera, Cynosure, Lumenis, Lutronic, Palomar Medical Technologies, Sciton and Syneron Medical.

Competition in the aesthetics market could result in price-cutting, reduced profit margins and loss of market share, any of which would harm our business, financial condition and results of operations. Our ability to compete effectively depends upon our ability to distinguish our company and our products from our competitors and their products, and on such factors as:

- safety and effectiveness;
- product pricing;
- success of our marketing initiatives;
- compelling clinical data;
- intellectual property protection;
- quality of customer support; and
- development of successful distribution channels, both domestically and internationally.

Some of our competitors have more established products and customer relationships than we do, which could inhibit our market penetration efforts. For example, we have encountered, and expect to continue to encounter, situations where, due to pre-existing relationships, potential customers decided to purchase additional products from our competitors. Potential customers also may need to recoup the cost of expensive products that they have already purchased from our competitors and thus may decide not to purchase our products, or to delay such purchase. If we are unable to achieve continued market penetration, we will be unable to compete effectively and our business will be harmed.

In addition, some of our current and potential competitors have significantly greater financial, research and development, manufacturing, and sales and marketing resources than we have. Our competitors could utilize their greater financial resources to acquire other companies to gain enhanced name recognition and market share, as well as new technologies or products that could effectively compete with our existing product line. Given the relatively few competitors currently in the market, any business combination could exacerbate any existing competitive pressures, which could harm our business.

Competition among providers of devices for the aesthetics market is characterized by rapid innovation, and we must continuously develop new products or our revenue may decline.

While we attempt to protect our products through patents and other intellectual property rights, there are few barriers to entry that would prevent new entrants or existing competitors from developing products that compete directly with ours. As we continue to create market demand for non-surgical, non-invasive or minimally invasive treatments, competitors will enter the market with other products making similar or superior claims. We expect that any competitive advantage we may enjoy from our current and future innovations may diminish over time, as companies

successfully respond to our, or create their own, innovations. Consequently, we believe that we will have to continuously innovate and improve our products and technology to compete successfully. If we are unable to innovate successfully, our systems could become obsolete and our revenue will decline as our customers purchase competing products.

Our products may have undetected and unforeseen design flaws, and may experience failures particularly when first introduced, or at any time during their lifecycle. Any product recall as a result of flaws or failures could result in the loss of or delays in market acceptance of our products and adversely affect our business and reputation. Correcting defects can be time consuming. Any significant returns or warranty claims could result in significant additional costs to us and could adversely affect our results of operations.

Table of Contents

Negative publicity regarding our Thermage and Fraxel procedures could harm demand, which would adversely affect sales and our financial performance.

We have in the past experienced, and expect that in the future we will experience, negative media exposure. Such publicity may present negative individual physician or patient experience regarding the safety or effectiveness of our procedures. Competitors could attempt to use such publicity to harm our reputation and disrupt current or potential future customer relationships. While, to date, we have not observed a material impact on our quarterly financial results of operations from negative publicity, future results could be negatively impacted. Additionally, while we believe that obtaining positive publicity is important to our success, and it is an important component of our marketing efforts, we have also not observed a material impact on our quarterly financial results of operations from positive publicity.

Our reputation and competitive position may be harmed not only by negative media exposure, but also by other publicly-available information suggesting that our procedures are not safe. For example, we file adverse event reports with the FDA that are publicly available on the FDA s website if our product may have caused or contributed to a serious injury or malfunctioned in a way that would likely cause or contribute to a serious injury if it were to recur. Competitors may attempt to harm our reputation by pointing to isolated injuries that have been reported or publicized, or by claiming that their product is superior because they have not filed as many adverse event reports with the FDA. Such negative publicity and competitor behavior could harm our reputation and our future sales.

Our manufacturing operations and those of our key manufacturing subcontractors are dependent upon third-party suppliers, making us vulnerable to supply shortages and price fluctuations, which could harm our business.

Several components and materials that comprise our products are currently manufactured by a single supplier or a limited number of suppliers. In many of these cases, we have not yet qualified alternate suppliers and rely upon purchase orders, rather than long-term supply agreements. A supply interruption or an increase in demand beyond our current suppliers capabilities could harm our ability to manufacture our products until new sources of supply are identified and qualified. Our reliance on these suppliers subjects us to a number of risks that could harm our business, including:

- interruption of supply resulting from modifications to or discontinuation of a supplier s operations;
- delays in product shipments resulting from uncorrected defects, reliability issues or a supplier s variation in a component;
- a lack of long-term supply arrangements for key components with our suppliers;
- inability to obtain adequate supply in a timely manner, or to obtain adequate supply on commercially reasonable terms;
- difficulty locating and qualifying alternative suppliers for our components in a timely manner;
- production delays related to the evaluation and testing of products from alternative suppliers, and corresponding regulatory qualifications;
- delay in delivery due to our suppliers prioritizing other customer orders over ours;
- damage to our brand reputation caused by defective components produced by our suppliers;

increased cost of our warranty program due to product repair or replacement based upon defects in components produced by our suppliers; and

fluctuation in delivery by our suppliers due to changes in demand from us or their other customers.

Any interruption in the supply of components or materials, or our inability to obtain substitute components or materials from alternate sources at acceptable prices in a timely manner, could impair our ability to meet the demand of our customers, which would have an adverse effect on our business.

Table of Contents

If, in the future, we decide to perform additional manufacturing functions internally that we currently outsource, our business could be harmed by our limited manufacturing experience and related capabilities.

We currently perform certain value-added and proprietary manufacturing processes internally at our principal facility, and we outsource the manufacture of components, subassemblies and certain finished products to a limited number of third parties. For financial or operational purposes, we may elect to perform additional component or system manufacturing functions internally. In that event, we may face a number of challenges beyond those that we currently address in our internal assembly, inspection, testing and certification activities. Implementing complex or specialized manufacturing processes could lead to difficulties in producing sufficient quantities of manufactured items that meet our quality standards and that comply with applicable regulatory requirements in a timely and cost-effective manner. In addition, if we experience these types of internal manufacturing difficulties, it may be expensive and time consuming to engage a new or previous subcontractor or supplier to fulfill our replacement manufacturing needs. The occurrence of any of these events could harm our business.

Problems in our manufacturing processes, or those of our manufacturing subcontractors, that lead to an actual or possible malfunction in our products, may require us to recall products from customers and could disrupt our operations. Our results of operations, our reputation and market acceptance of our products could be harmed if we encounter difficulties in manufacturing that result in a recall or patient injury, and delays in our ability to fill customer orders.

We outsource the repair of key elements of our first generation Thermage RF generator to a single repair subcontractor.

We outsource the repair of our first generation Thermage RF generator to a single contract manufacturer, Stellartech. If Stellartech s operations are interrupted, we may be limited in our ability to repair equipment. Stellartech is dependent on trained technical labor to effectively repair our generator. In addition, Stellartech is a medical device manufacturer and is required to demonstrate and maintain compliance with the FDA s Quality System Regulation, or QSR. If Stellartech fails to comply with the FDA s QSR, its repair operations could be halted and our ability to repair first generation systems would be impaired.

We may not be able to develop an alternative cooling system that will be in compliance with changing environmental regulations in a timely or cost-effective manner.

The cooling capability of our Thermage systems relies upon a hydroflurocarbon, or HFC, called R134a, to protect the outer layer of the skin from over-heating while our device delivers RF energy to the subcutaneous tissue. New environmental regulations phasing out certain HFCs over the next decade have been adopted or are under consideration in a number of countries, and recent European Union directives require the phase-out of certain HFCs. Our research and development staff continues to make good progress in developing an alternative cooling system to address changing environmental regulations. We have also put in place a solution for the European Union import restrictions. If we are unable to develop an alternative cooling system for our device which is not dependent on R134a in a timely or cost-effective manner, our Thermage systems may not be in compliance with environmental regulations, which could result in fines, civil penalties and the inability to sell our products in certain major international markets.

We forecast sales to determine requirements for components and materials used in our systems, and if our forecasts are incorrect, we may experience delays in shipments or increased inventory costs.

We keep limited materials, components and finished product on hand. To manage our manufacturing operations with our suppliers, we forecast anticipated product orders and material requirements to predict our inventory needs up to six months in advance and enter into purchase orders on the basis of these requirements. Our limited historical experience may not provide us with enough data to accurately predict future demand. If our business expands, our demand for components and materials would increase and our suppliers may be unable to meet our demand. If we overestimate our component and material requirements, we will have excess inventory, which would increase our expenses. If we underestimate our component and material requirements, we may have inadequate inventory, which could interrupt, delay or prevent delivery of systems to our customers. Any of these occurrences would negatively affect our financial performance and the level of satisfaction our customers have with our business.

Table of Contents

Even though we require training for users of Thermage and Fraxel systems and do not sell our systems to non-physicians, there exists a potential for misuse, which could harm our reputation and our business.

While we only sell our products to licensed physicians who have met our training requirements, federal regulations allow us to sell our systems to licensed practitioners. The definition of licensed practitioners varies from state to state. As a result, our systems may be operated by licensed practitioners with varying levels of training, and in many states by non-physicians, including physician assistants, registered nurses and nurse practitioners. Thus, in some states, the definition of licensed practitioner may result in the legal use of our products by non-physicians. Outside the United States, our independent distributors sell in many jurisdictions that do not require specific qualifications or training for purchasers or operators of products. We do not supervise the procedures performed with our systems, nor can we be assured that direct physician supervision of our equipment occurs according to our recommendations. We, and our distributors, require purchasers of our products to undergo an initial training session as a condition of purchase, but do not require ongoing training. In addition, we prohibit the sale of our systems to companies that rent our systems to third parties without our approval, but cannot prevent an otherwise qualified physician from contracting with a rental company in violation of their purchase agreement with us. The use of our systems by non-physicians, as well as noncompliance with the operating guidelines set forth in our training programs, may result in product misuse and adverse treatment outcomes, which could harm our reputation and expose us to costly product liability litigation.

Product liability suits could be brought against us due to defective design, labeling, material or workmanship, or misuse of our products, and could result in expensive and time-consuming litigation, payment of substantial damages and an increase in our insurance rates.

If our products are defectively designed, manufactured or labeled, contain defective components or are misused, we may become subject to substantial and costly litigation by our customers or their patients. Misusing our products or failing to adhere to operating guidelines could cause significant skin damage and underlying tissue damage. In addition, if our operating guidelines are found to be inadequate, we may be subject to liability. We have been and may, in the future, be involved in litigation related to the use of our products. Product liability claims could divert management s attention from our core business, be expensive to defend and result in sizable damage awards against us. We may not have sufficient insurance coverage for all future claims. We may not be able to obtain insurance in amounts or scope sufficient to provide us with adequate coverage against all potential liabilities. Any product liability claim brought against us, with or without merit, could increase our product liability insurance rates or prevent us from securing continuing coverage, could harm our reputation in the industry and reduce product sales. Product liability claims in excess of our insurance coverage would be paid out of cash reserves, harming our financial condition and reducing our operating results.

After-market modifications to our treatment tips by third parties and the development of counterfeit treatment tips could reduce our sales, expose us to product liability litigation and dilute our brand quality.

Third parties have introduced adulterated after-market modifications to our treatment tips which have enabled re-use of our treatment tips in multiple procedures. Because our treatment tips are designed to withstand a finite number of firings, modifications intended to increase the number of firings could result in patient injuries caused by the use of worn-out or damaged treatment tips. In addition, third parties may seek to develop counterfeit treatment tips that are compatible with our systems and available to practitioners at lower prices than our own. If security features incorporated into the design of our systems are unable to prevent after-market modifications to our treatment tips or the introduction of counterfeit treatment tips, we could be subject to reduced treatment tip sales, product liability lawsuits resulting from the use of damaged or defective goods and damage to our reputation for providing a quality product.

We depend on skilled and experienced personnel to operate our business effectively. If we are unable to recruit, hire and retain these employees, our ability to manage and expand our business will be harmed, which would impair our future revenue and profitability.

Our success largely depends on the skills, experience and efforts of our officers and other key employees. Many of our officers and key employees do not have employment contracts with us and can terminate their employment at any time. The loss of any of our senior management team members could weaken our management expertise and harm our business.

Our ability to retain our skilled labor force and our success in attracting and hiring new skilled employees will be a critical factor in determining whether we will be successful in the future. We may not be able to meet our future hiring needs or retain existing personnel. We will face particularly significant challenges and risks in hiring, training, managing and retaining engineering and sales and marketing employees, as well as independent distributors, most of who are geographically dispersed and must be trained in the use and benefits of our products. Failure to attract and retain personnel, particularly technical and sales and marketing personnel, would materially harm our ability to compete effectively and grow our business.

36

Table of Contents

Risks Related to Regulatory Matters

If we fail to obtain and maintain necessary FDA clearances for our systems and indications, if clearances for future products and indications are delayed, not issued or rescinded or if there are federal or state level regulatory changes, our commercial operations would be harmed.

Our Thermage and Fraxel systems are medical devices that are subject to extensive regulation in the United States by the FDA for manufacturing, labeling, sale, promotion, distribution and shipping. Before a new medical device, or a new use of or claim for an existing product, can be marketed in the United States, it must first receive either 510(k) clearance or premarket approval from the FDA, unless an exemption applies. Either process can be expensive and lengthy. The FDA s 510(k) clearance process usually takes from three to 12 months, but it can last significantly longer. The process of obtaining premarket approval is much more costly and uncertain than the 510(k) clearance process, and it generally takes from one to three years, or even longer, from the time the application is filed with the FDA.

Medical devices may be marketed only for the indications for which they are approved or cleared. We have obtained 510(k) clearance for various indications for our Thermage and Fraxel systems. However, our clearances can be revoked if safety or effectiveness problems develop. We are also subject to Medical Device Reporting regulations, which require us to report to the FDA if our product causes or contributes to a death or serious injury, or malfunctions in a way that would likely cause or contribute to a death or serious injury. Our ThermaCool system is also subject to state regulations which are, in many instances, in flux. Changes in state regulations may impede sales. For example, federal regulations allow our systems to be sold to, or on the order of, licensed practitioners, as determined on a state-by-state basis. As a result, in some states, non-physicians may legally purchase and operate our systems. However, a state could change its regulations at any time, disallowing sales to particular types of end users. We cannot predict the impact or effect of future legislation or regulations at the federal or state levels.

The FDA and state authorities have broad enforcement powers. Our failure to comply with applicable regulatory requirements could result in enforcement action by the FDA or state agencies, which may include any of the following sanctions:

- warning letters, fines, injunctions, consent decrees and civil penalties;
- repair, replacement, refunds, recall or seizure of our product;
- operating restrictions or partial suspension or total shutdown of production;
- refusing our requests for 510(k) clearance or premarket approval of new products, new intended uses or modifications to our existing products;
- withdrawing 510(k) clearance or premarket approvals that have already been granted; and
- criminal prosecution.

If any of these events were to occur, our business could be harmed.

If we modify our FDA-cleared device, we may need to seek and obtain new clearances, which, if not granted, would prevent us from selling our modified product or require us to redesign our product.

Any modification to an FDA-cleared device that would significantly affect its safety or effectiveness or that would constitute a major change in its intended use would require a new 510(k) clearance or possibly a premarket approval. We may not be able to obtain additional 510(k) clearances or premarket approvals for new products or for modifications to, or additional indications for, our existing products in a timely fashion, or at all. Delays in obtaining future clearances would adversely affect our ability to introduce new or enhanced products in a timely manner, which in turn would harm our revenue and potential future profitability. We have made modifications to our device in the past and may

make additional modifications in the future that we believe do not or will not require additional clearances or approvals. If the FDA disagrees, and requires new clearances or approvals for the modifications, we may be required to recall and to stop marketing the modified device, which could harm our operating results and require us to redesign our product.

Table of Contents

If we or our repair subcontractors fail to comply with the FDA s Quality System Regulation, our business would suffer.

We and our repair subcontractors are required to demonstrate and maintain compliance with the FDA s Quality System Regulation, or QSR. The QSR is a complex regulatory scheme that covers the methods and documentation of the design, testing, control, manufacturing, labeling, quality assurance, packaging, storage and shipping of our product. The FDA enforces the QSR through periodic unannounced inspections. We have been, and anticipate in the future being, subject to such inspections. Our failure, or the failure of our repair subcontractors, to take satisfactory corrective action in response to an adverse QSR inspection could result in enforcement actions, including a public warning letter, a shutdown of our manufacturing operations, a recall of our products, civil or criminal penalties or other sanctions, which would cause our sales and business to suffer.

We may be unable to obtain or maintain international regulatory qualifications or approvals for our current or future products and indications, which could harm our business.

Sales of our products outside the United States are subject to foreign regulatory requirements that vary widely from country to country. In addition, the FDA regulates exports of medical devices from the United States. Complying with international regulatory requirements can be an expensive and time-consuming process and approval is not certain. The time required to obtain clearance or approvals, if required by other countries, may be longer than that required for FDA clearance or approvals, and requirements for such clearances or approvals may significantly differ from FDA requirements. We primarily rely upon third-party distributors to obtain all regulatory clearances and approvals required in countries outside of the United States, and these distributors may be unable to obtain or maintain such clearances or approvals. Our distributors may also incur significant costs in attempting to obtain and in maintaining foreign regulatory approvals or qualifications, which could increase the difficulty of attracting and retaining qualified distributors. If our distributors experience delays in receiving necessary qualifications, clearances or approvals to market our products outside the United States, or if they fail to receive those qualifications, clearances or approvals, we may be unable to market our products or enhancements in international markets effectively, or at all. To support the registration of products outside the United States, we must comply with and be registered to the ISO 13485: 2003 Quality System Standard. Failure to adequately maintain our ISO 13485: 2003 registration may adversely impact or prevent the registration of our products in some foreign countries.

Risks Related to Our Internal Control over Financial Reporting

While we believe we currently have adequate internal control over financial reporting, we are required to assess our internal control over financial reporting on an annual basis and any future adverse results from such assessment could result in a loss of investor confidence in our financial reports and have an adverse effect on our stock.

Pursuant to the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated by the SEC, we are required to maintain disclosure controls and procedures and adequate internal control over financial reporting. Under such requirements we must furnish in our Form 10-K a report by our management regarding the effectiveness of our internal control over financial reporting. The report includes, among other things, an assessment of the effectiveness of our internal control over financial reporting as of the end of our fiscal year, including a statement as to whether or not our internal control over financial reporting is effective. This assessment must include disclosure of any material weaknesses in our internal control over financial reporting identified by management. While we currently believe our internal control over financial reporting is effective, the effectiveness of our internal controls in future periods is subject to the risk that our controls may become inadequate because of changes in conditions. The effectiveness of our controls and procedures may in the future be limited by a variety of factors, including:

- faulty human judgment and simple errors, omissions or mistakes;
- fraudulent action of an individual or collusion of two or more people;
- inappropriate management override of procedures; and
- the possibility that any enhancements to controls and procedures may still not be adequate to assure timely and accurate financial information.

If we are unable to assert that our internal control over financial reporting is effective in any future period, or if and when applicable, our auditors are unable to express an opinion on the effectiveness of our internal controls, or conclude that our internal controls are ineffective, or if we fail to maintain adequate and effective internal control over financial reporting, we could lose investor confidence in the accuracy and completeness of our financial reports, which could have an adverse effect on our stock price.

Table of Contents

Risks Related to Our Common Stock

If our public guidance or our future operating performance does not meet investor expectations, our stock price could decline.

We provide guidance to the investing community regarding our anticipated future operating performance. Our business typically has a short sales cycle, so that we do not have significant backlog of orders at the start of a quarter, and our ability to sell our products successfully is subject to many uncertainties, as discussed. In light of these factors, and the uncertainty as a result of the general economic situation, it is difficult for us to estimate with accuracy our future results. Our expectations regarding these results will be subject to numerous risks and uncertainties that could make actual results differ materially from those anticipated. If our actual results do not meet our public guidance or our guidance or actual results do not meet the expectations of third-party financial analysts, our stock price could decline significantly.

We expect that the price of our common stock will fluctuate substantially.

The market price of our common stock is likely to be highly volatile and may fluctuate substantially due to many factors, including:

volume and timing of sales of our products;

the introduction of new products or product enhancements by us or our competitors;

disputes or other developments with respect to our intellectual property rights or the intellectual property rights of others;

our ability to develop, obtain regulatory clearance or approval for and market new and enhanced products on a timely basis;

product liability claims or other litigation;

quarterly variations in our or our competitors results of operations;

sales of large blocks of our common stock, including sales by our executive officers and directors;

developments in our industry;

media exposure of our products or products of our competitors;

changes in governmental regulations or in the status of our regulatory approvals or applications;

changes in earnings estimates or recommendations by securities analysts; and

general market conditions and other factors, including factors unrelated to our operating performance or the operating performance of our competitors.

These and other factors may make the price of our stock volatile and subject to unexpected fluctuation.

A sale of a substantial number of shares of our common stock may cause the price of our common stock to decline.

If our stockholders sell substantial amounts of our common stock in the public market, for example, liquidation of shares held by our principal stockholders, including shares issued upon the exercise of outstanding options, the market price of our common stock could decline. These sales also might make it more difficult for us to sell equity or equity-related securities in the future at a time and price that we deem reasonable or appropriate.

Our directors, officers and principal stockholders have significant voting power and may take actions that may not be in the best interests of our other stockholders.

Our officers, directors and principal stockholders each holding more than 5% of our common stock collectively control more than 38% of our outstanding common stock. As a result, these stockholders, if they act together, will be able to significantly influence the management and affairs of our company and most matters requiring stockholder approval, including the election of directors and approval of significant corporate transactions. This concentration of ownership may have the effect of delaying or preventing a change in control and might adversely affect the market price of our common stock. This concentration of ownership may not be in the best interests of our other stockholders.

Table of Contents

Anti-takeover provisions in our Amended and Restated Certificate of Incorporation and Bylaws, and Delaware law, contain provisions that could discourage a takeover.

Our certificate of incorporation and bylaws, and Delaware law, contain provisions that might enable our management to resist a takeover, and might make it more difficult for an investor to acquire a substantial block of our common stock. These provisions include:

- a classified board of directors;
- advance notice requirements to stockholders for matters to be brought at stockholder meetings;
- a supermajority stockholder vote requirement for amending certain provisions of our Amended and Restated Certificate of Incorporation and Bylaws;
- limitations on stockholder actions by written consent; and
- the right to issue preferred stock without stockholder approval, which could be used to dilute the stock ownership of a potential hostile acquirer.

These provisions might discourage, delay or prevent a change in control of our company or a change in our management. The existence of these provisions could adversely affect the voting power of holders of common stock and limit the price that investors might be willing to pay in the future for shares of our common stock.

We have a large number of authorized but unissued shares of stock, which could negatively impact you if you purchase our common stock.

Our certificate of incorporation provides for 100,000,000 shares of authorized common stock, of which 52.1 million shares are available for future issuance, and 10,000,000 shares of authorized preferred stock, all of which are available for future issuance. The issuance of additional shares of common stock may have a dilutive effect on earnings per share and relative voting power. We could use the shares of common stock that are available for future issuance in dilutive equity financing transactions, or to oppose a hostile takeover attempt or delay or prevent changes in control or changes in or removal of management, including transactions that are favored by a majority of the stockholders or in which the stockholders might otherwise receive a premium for their shares over then-current market prices or benefit in some other manner.

Our board of directors will be authorized, without further stockholder approval, to issue up to 10,000,000 shares of preferred stock with such rights, preferences and privileges as our board may determine. These rights, preferences and privileges may include dividend rights, conversion rights, voting rights and liquidation rights that may be greater than the rights of our common stock. As a result, the rights of holders of our common stock will be subject to, and could be adversely affected by, the rights of holders of any preferred stock that may be issued in the future.

We have not paid dividends in the past and do not expect to pay dividends in the future, and any return on investment may be limited to the value of our stock.

We have never paid cash dividends on our common stock and do not anticipate paying cash dividends on our common stock in the foreseeable future. The payment of dividends on our common stock will depend on our earnings, financial condition and other business and economic factors affecting us at such time as our board of directors may consider relevant. If we do not pay dividends, our stock may be less valuable because a return on your investment will only occur if our stock price appreciates.

Table of Contents

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

We did not sell any equity securities during the period covered by this report.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

None.

ITEM 5. OTHER INFORMATION

None.

ITEM 6. EXHIBITS

Exhibit No.	Description
31.1	Certification of Chief Executive Officer under Securities Exchange Act Rule 13a-14(a).
31.2	Certification of Chief Financial Officer under Securities Exchange Act Rule 13a-14(a).
32.1	Certifications of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S. C. 1350 and Securities Exchange Act Rule 13a-14(b).

Table of Contents

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Company has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Date: November 4, 2009

/s/ STEPHEN J. FANNING
Stephen J. Fanning
President and Chief Executive Officer
(Principal Executive Officer)

Date: November 4, 2009

/s/ JOHN F. GLENN
John F. Glenn
Chief Financial Officer
(Principal Financial and Accounting Officer)

Table of Contents

INDEX TO EXHIBITS

Exhibit No.	Description
31.1	Certification of Chief Executive Officer under Securities Exchange Act Rule 13a-14(a).
31.2	Certification of Chief Financial Officer under Securities Exchange Act Rule 13a-14(a).
32.1	Certifications of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S. C. 1350 and Securities Exchange Act Rule 13a-14(b).