
UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

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 000 — 51481

ELECTRO-OPTICAL SCIENCES, INC.

(Exact name of Registrant as specified in its charter)

Delaware

*(State or Other Jurisdiction of
Incorporation or Organization)*

13-3986004

*(I.R.S. Employer
Identification No.)*

3 West Main Street, Suite 201

Irvington, New York

(Address of Principal Executive offices)

10533

(Zip Code)

Registrant's Telephone Number, including area code:

(914) 591-3783

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 No

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

(Do not check if a smaller reporting company)

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 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 shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes No

As of November 5, 2009, 22,247,829 shares of the Registrant's common stock were outstanding.

Electro-Optical Sciences, Inc.
Table of Contents

	<u>Page</u>
PART I. FINANCIAL INFORMATION	
ITEM 1. Financial Statements	
Condensed Balance Sheets as of September 30, 2009 (unaudited) and December 31, 2008	2
Condensed Statements of Operations (unaudited) for the three and nine month periods ended September 30, 2009 and 2008	3
Condensed Statements of Cash Flows (unaudited) for the nine month periods ended September 30, 2009 and 2008	4
Notes to Condensed Financial Statements (unaudited)	5
ITEM 2. Management's Discussion and Analysis of Financial Condition and Results of Operations	17
ITEM 3. Quantitative and Qualitative Disclosures about Market Risk	25
ITEM 4. Controls and Procedures	26
PART II. OTHER INFORMATION	
ITEM 1. Legal Proceedings	26
ITEM 1A. Risk Factors	26
ITEM 2. Unregistered Sales of Equity Securities and Use of Proceeds	29
ITEM 3. Defaults Upon Senior Securities	29
ITEM 4. Submission of Matters to a Vote of Security Holders	29
ITEM 5. Other Information	29
ITEM 6. Exhibits	30
SIGNATURES	31
EXHIBIT INDEX	32
EX-31.1	
EX-31.2	
EX-32.1	

ELECTRO-OPTICAL SCIENCES, INC.
CONDENSED BALANCE SHEETS

	September 30, 2009 (unaudited)	December 31, 2008 *
ASSETS		
Current Assets:		
Cash and cash equivalents	\$ 24,779,013	\$ 15,069,939
Marketable securities	—	390,512
Prepaid expenses and other current assets	410,517	375,612
Total Current Assets	<u>25,189,530</u>	<u>15,836,063</u>
Property and equipment, net	663,763	643,383
Patents and trademarks, net	85,983	94,908
Deferred offering costs	140,407	—
Other assets	48,000	45,276
Total Assets	<u>\$ 26,127,683</u>	<u>\$ 16,619,630</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current Liabilities:		
Accounts payable (includes related parties of \$13,906 as of September 30, 2009 and \$17,500 as of December 31, 2008)	\$ 838,669	\$ 634,394
Accrued expenses	658,007	832,228
Deferred income	—	36,085
Other current liabilities	28,835	27,466
Total Current Liabilities	<u>1,525,511</u>	<u>1,530,173</u>
COMMITMENTS AND CONTINGENCIES (Note 9)		
Stockholders' Equity		
Preferred stock — \$.10 par value; authorized 10,000,000 shares; issued and outstanding: none		
Common stock — \$.001 par value; authorized 30,000,000 shares; issued and outstanding 21,002,269 shares at September 30, 2009 and 17,634,498 at December 31, 2008	21,002	17,634
Additional paid-in capital	98,220,977	75,845,953
Accumulated other comprehensive loss	—	(6,868)
Accumulated deficit	(73,639,807)	(60,767,262)
Stockholders' Equity	<u>24,602,172</u>	<u>15,089,457</u>
Total Liabilities and Stockholders' Equity	<u>\$ 26,127,683</u>	<u>\$ 16,619,630</u>

* Derived from the audited balance sheet as of December 31, 2008

See accompanying notes to the financial statements

ELECTRO-OPTICAL SCIENCES, INC.
CONDENSED STATEMENTS OF OPERATIONS
(unaudited)

	<u>Three months ended September 30,</u>		<u>Nine months ended September 30,</u>	
	<u>2009</u>	<u>2008</u>	<u>2009</u>	<u>2008</u>
Operating expenses:				
Research and development	\$ 2,801,208	\$ 3,325,122	\$ 7,636,224	\$ 9,994,205
General and administrative	<u>2,262,571</u>	<u>1,043,111</u>	<u>5,361,123</u>	<u>3,957,585</u>
Operating loss	(5,063,779)	(4,368,233)	(12,997,347)	(13,951,790)
Interest income	7,589	105,569	42,357	380,167
Other income	<u>8,329</u>	<u>62,752</u>	<u>82,445</u>	<u>143,610</u>
Net loss:	<u>\$ (5,047,861)</u>	<u>\$ (4,199,912)</u>	<u>\$ (12,872,545)</u>	<u>\$ (13,428,013)</u>
Basic and diluted net loss per common share	<u>\$ (0.26)</u>	<u>\$ (0.25)</u>	<u>\$ (0.70)</u>	<u>\$ (0.85)</u>
Basic and diluted weighted average number of common shares outstanding	<u>19,760,367</u>	<u>16,678,852</u>	<u>18,358,579</u>	<u>15,832,391</u>

See accompanying notes to the financial statements

ELECTRO-OPTICAL SCIENCES, INC.
CONDENSED STATEMENTS OF CASH FLOWS
(unaudited)

	Nine Months Ended September 30,	
	2009	2008
Cash flows from operating activities:		
Net loss	\$(12,872,545)	\$ (13,428,013)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	233,599	225,825
Non-cash compensation	410,621	248,140
Amortization of discount on marketable securities	—	519
Changes in operating assets and liabilities:		
Increase in other assets	(2,724)	—
(Increase) decrease in prepaid expenses and other current assets	(34,904)	263,072
Increase in accounts payable and accrued expenses	30,054	685,286
Decrease in deferred income	(36,085)	(72,861)
Increase in other current liabilities	1,369	8,642
Net cash used in operating activities	<u>(12,270,615)</u>	<u>(12,069,390)</u>
Cash flows from investing activities:		
Purchases of property and equipment	(245,054)	(298,733)
Proceeds from sale of marketable securities	397,380	934,347
Net cash provided by investing activities	<u>152,326</u>	<u>635,614</u>
Cash flows from financing activities:		
Proceeds from exercise of stock options	167,807	34,770
Proceeds from exercise of stock warrants	121,672	10,586
Proceeds from registered direct offering-financing	15,000,000	11,909,057
Expenses relating to registered direct offering-financing	(1,249,593)	(941,438)
Proceeds from Committed Equity Financing Facility	7,977,000	—
Expenses relating to Committed Equity Financing Facility	(189,523)	—
Net cash provided by financing activities	<u>21,827,363</u>	<u>11,012,975</u>
Net increase (decrease) in cash and cash equivalents	9,709,074	(420,801)
Cash and cash equivalents at beginning of period	15,069,939	19,196,589
Cash and cash equivalents at end of period	<u>\$ 24,779,013</u>	<u>\$ 18,775,788</u>
Supplemental Schedule of Non-cash Investing and Financing Activities		
Unrealized gain on marketable securities	<u>\$ 6,868</u>	<u>\$ 10,237</u>

See accompanying notes to the financial statements

ELECTRO-OPTICAL SCIENCES, INC.
NOTES TO CONDENSED FINANCIAL STATEMENTS
(In thousands, except for share and per share data)
(unaudited)

1. ORGANIZATION AND BASIS OF PRESENTATION

Electro-Optical Sciences, Inc., a Delaware corporation (“EOS” or the “Company”) is a medical device company focused on the design, development and commercialization of a non-invasive, point-of-care instrument to assist in the early diagnosis of melanoma. Our flagship product, MelaFind[®], features a hand-held imaging device that emits light of multiple wavelengths to capture images of suspicious pigmented skin lesions and extract data. The data are then analyzed utilizing image processing classification algorithms, ‘trained’ on our proprietary database of melanomas and benign lesions, to provide information to assist in the management of the patient, including information useful in the decision of whether to biopsy the lesion.

The components of the MelaFind[®] system include:

- a *hand-held imaging device*, which employs high precision optics and multi-spectral illumination (multiple colors of light including near infra-red);
- a *proprietary database* of pigmented skin lesions, which we believe to be the largest in the U.S.; and
- *lesion classifiers*, which are sophisticated mathematical algorithms that extract lesion feature information and classify lesions.

On June 3, 2009, the Company submitted the MelaFind[®] Pre-market Approval Application (“PMA”) to the U.S. Food and Drug Administration (“FDA”), which the FDA has previously indicated will receive expedited review. Expedited review means that upon filing the PMA application, the FDA will conduct a team review, prioritize the application, and allocate sufficient resources toward a 180 day review period. While the expedited review could shorten the MelaFind[®] FDA approval process, the Company can provide no assurances that this will be the case.

The Company was notified by the FDA, pursuant to the submission of the MelaFind[®] Pre-Market Approval Application on June 3, 2009, that the application was suitable for filing, and the official filing date is June 9, 2009. The MelaFind[®] PMA is under review at the FDA, and the Company is actively working with the FDA during this process. The date for an anticipated FDA Advisory Panel to review the MelaFind[®] PMA has not been established, therefore, we expect the review of the MelaFind[®] PMA to continue into 2010.

To date the Company has not generated any revenues from MelaFind[®].

The Company anticipates that it will continue to incur net losses for the foreseeable future in the development and commercialization of the MelaFind[®] device. From inception, the Company financed operations primarily through the sale of convertible preferred stock and subsequently sold common stock as part of an initial public offering (“IPO”) on October 28, 2005, two private placements: (one that closed in November 2006 and a second that closed in August 2007) and two registered direct offerings (one that closed in August 2008 and a second that closed July 2009).

On May 7, 2009, the Company entered into a committed equity financing facility (“CEFF”) with Kingsbridge Capital Limited, pursuant to which Kingsbridge committed to purchase, subject to certain conditions, up to the lesser of \$45 million or 3,327,000 shares of the Company’s common stock, subject to various other contractual and regulatory requirements. There is no assurance that the Company will satisfy all the various conditions allowing it to use all of the CEFF.

[Table of Contents](#)

In connection with this CEFF, the Company issued a 5 year warrant, exercisable as of November 7, 2009, to Kingsbridge to purchase up to 200,000 shares of the Company's common stock at an exercise price of \$11.35 per share, with a Black Scholes Fair Value of \$678 (refer to Note 10 for further details). A registration statement on Form S-3 was declared effective on May 22, 2009, on which 3,527,000 shares of common stock were registered for resale if and when acquired by Kingsbridge under the CEFF and its warrant.

On July 16, 2009, the Company completed, pursuant to the Company's shelf registration statement on Form S-3, a registered direct offering of 2,400,000 shares of the Company's common stock with a select group of institutional investors. The aggregate gross proceeds from the offering were \$15 million (with net proceeds of approximately \$13.75 million). The offering closed on July 22, 2009 for a purchase price of \$6.25 per share of the Company's common stock. Approximately \$13.1 million remains available under the Company's shelf registration statement as of September 30, 2009.

Under the May 7, 2009 CEFF, during August and September of 2009, the Company sold 862,201 shares of common stock to Kingsbridge Capital Limited, at an average per share price of approximately \$9.25, for gross proceeds of \$7.977 million. A proportionate share of the CEFF originating expenses was allocated to this sale from deferred financing expense. Net of expenses, proceeds from this sale were approximately \$7.928 million.

Subsequent to September 30, 2009 and through November 5, 2009, also under the CEFF, the Company sold 962,740 shares of common stock to Kingsbridge Capital Limited, at an average per share price of approximately \$9.23, for gross proceeds of \$8.886 million. A proportionate share of the CEFF originating expenses was allocated to this sale from deferred offering costs. Net of expenses, proceeds from this sale were approximately \$8.831 million (see also Note 14).

The Company faces certain risks and uncertainties which are present in many emerging medical device companies regarding future profitability, ability to obtain future capital, protection of patents and intellectual property rights, competition, rapid technological change, government regulations, changing health care marketplace, recruiting and retaining key personnel, and reliance on third party manufacturing organizations.

As of September 30, 2009, the Company's total of cash, cash equivalents and marketable securities was \$24.8 million. The Company will require additional funds to fully commercialize Melafind®. There can be no assurances that the Company will be able to raise funds as needed from time to time, whether under the Kingsbridge Capital Limited CEFF or by other types of financing. Funds that become available may not be on acceptable terms, and there can be no assurance that any additional funding the Company does obtain will be sufficient to meet the Company's needs in the long term.

The unaudited condensed financial statements included herein have been prepared from the books and records of the Company pursuant to the rules and regulations of the SEC for reporting on Form 10-Q. The information and note disclosures normally included in complete financial statements prepared in accordance with generally accepted accounting principles ("GAAP") in the United States have been condensed or omitted pursuant to such rules and regulations. The interim financial statements should be read in conjunction with the audited financial statements and notes thereto included in the Company's Annual Report on Form 10-K for the year ended December 31, 2008.

The Company's management is responsible for the financial statements included in this document. The Company's interim financial statements are unaudited. Interim results may not be indicative of the results that may be expected for the year. However, the Company believes all adjustments considered necessary for a fair presentation of these interim financial statements have been included and are of a normal and recurring nature.

2. MARKETABLE SECURITIES

At December 31, 2008, the Company's marketable securities generally consisted of corporate debt securities with a weighted average maturity not in excess of twelve months. The Company classifies its marketable securities as available-for-sale, as defined by Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 320, *Accounting for Certain Investments in Debt and Equity Securities*. Available-for-sale securities are carried at fair value, with unrealized gains and losses reported as a component of stockholders' equity in accumulated other comprehensive loss. Interest income, realized gains and losses, and declines in value of securities judged to be other-than-temporary are included in the Company's statement of operations. As of September 30, 2009, the Company did not hold any marketable securities.

The Company evaluates declines in the fair value of its investments in available-for-sale marketable securities to determine if these declines are other-than-temporary. When a decline in value is determined to be other-than-temporary, an impairment charge would be recorded and a new cost basis in the investment would be established.

3. COMPREHENSIVE LOSS

Comprehensive loss includes net loss and unrealized gains and losses on available-for-sale marketable securities. Cumulative unrealized gains and losses on available-for-sale marketable securities are reflected as accumulated other comprehensive loss in stockholders' equity on the Company's balance sheet. As of September 30, 2009, the Company did not hold any marketable securities.

For the three months ended September 30, 2009, comprehensive loss and net loss were \$5,048 as there was no unrealized gain or loss on available-for-sale marketable securities. For the three months ended September 30, 2008, comprehensive loss was \$4,199, which includes a net loss of \$4,200 and an unrealized gain on available-for-sale marketable securities of \$1.

For the nine months ended September 30, 2009, comprehensive loss was \$12,866 which includes a net loss of \$12,873, and an unrealized gain on available-for-sale marketable securities of \$7. For the nine months ended September 30, 2008, comprehensive loss was \$13,418, which includes a net loss of \$13,428 and an unrealized gain on available-for-sale marketable securities of \$10.

4. USE OF ESTIMATES

The preparation of financial statements in conformity with GAAP requires the use of estimates and assumptions by management that affect reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. The most significant estimates relate to stock based compensation arrangements and accrued expenses. Actual results could differ from these estimates.

5. RECENTLY ADOPTED ACCOUNTING PRONOUNCEMENTS

In June 2009, the Financial Accounting Standards Board (FASB) issued guidance which is included in the Codification in FASB Accounting Standards Codification (ASC) 105, "Generally Accepted Accounting Principles." This guidance modifies the Generally Accepted Accounting Principles (GAAP) hierarchy by establishing only two levels of GAAP, authoritative and nonauthoritative accounting literature. Effective July 2009, the FASB ASC, also known collectively as the "Codification," is considered the single source of authoritative U.S. accounting and reporting standards, except for additional authoritative rules and interpretive releases issued by the SEC. This guidance is effective for financial statements issued for reporting periods that end after September 15, 2009. Where possible, FASB references have been replaced with ASC references.

[Table of Contents](#)

As of January 1, 2009, the Company implemented the transition guidance related to FASB Staff Position (FSP) Emerging Issues Task Force (EITF) 03-6-1, "Determining Whether Instruments Granted in Share-Based Payment Transactions Are Participating Securities", which is included in the codification in ASC 260-10, "Earnings Per Share" (ASC 260-10). ASC 260-10 requires the Company to treat unvested deferred stock units as participating securities in accordance with the two-class method in the calculation of both basic and diluted earnings per share. ASC 260-10 must be applied retrospectively. The effect of the retrospective application of ASC 260-10 was not material to the Company's earnings per share in 2008, 2007 or 2006.

The Company has adopted FASB ASC 820-10, "Fair Value Measurements and Disclosures" ("ASC 820-10") with respect to its financial assets and liabilities. In February 2008, the FASB issued updated guidance related to fair value measurements, which is included in the Codification in ASC 820-10, Fair Value Measurements and Disclosures. The updated guidance provided a one year deferral of the effective date of ASC 820-10 for non-financial assets and non-financial liabilities, except those that are recognized or disclosed in the financial statements at fair value at least annually. The implementation of the non-financial items measured on a non-recurring basis did not have a material impact on the Company's financial statements.

In April 2008, the FASB issued ASC 350, "Intangibles-Goodwill and Other" (ASC 350). ASC 350 amends the factors that should be considered in developing renewal or extension assumptions used to determine the useful life of a recognized intangible asset. ASC 350 is effective for calendar-year companies beginning January 1, 2009. The requirement for determining useful lives must be applied prospectively to intangible assets acquired after the effective date and the disclosure requirements must be applied prospectively to all intangible assets recognized as of, and subsequent to, the effective date. The implementation of this standard did not have a material impact on the Company's financial statements.

In May 2009, the FASB issued guidance which is included in the Codification in ASC 855, "Subsequent Events" (ASC 855). This guidance establishes the accounting and disclosure of events that occur after the balance sheet date but before financial statements are issued or are available to be issued. It requires the disclosure of the date through which an entity has evaluated subsequent events and the basis for that date. This guidance is effective for interim or annual financial periods ending after June 15, 2009, and as such, became effective for the Company on June 30, 2009. We evaluated subsequent events through the date and time the financial statements were issued on November 9, 2009.

6. RECENT ACCOUNTING PRONOUNCEMENTS

In June 2009, the FASB issued SFAS No. 167, "Amendments to FASB Interpretation No. 46(R)" (SFAS 167), which has not yet been codified in the ASC. SFAS 167 amends certain requirements of FASB Interpretation No. 46 (revised December 2003), Consolidation of Variable Interest Entities, to improve financial reporting by enterprises involved with variable interest entities and to provide more relevant and reliable information to users of financial statements. This Statement is effective as of the beginning of each reporting entity's first annual reporting period that begins after November 15, 2009, for interim periods within that first annual reporting period, and for interim and annual reporting periods thereafter. Earlier application is prohibited. The Company is currently assessing the impact of the adoption of SFAS 167.

In August 2009, the FASB issued Accounting Standards Update (ASU) No. 2009-05, "Fair Value Measurements and Disclosures" (Topic 820) (ASU 2009-05). ASU 2009-05 provided amendments to ASC 820-10, "Fair Value Measurements and Disclosures — Overall," for the fair value measurement of liabilities. ASU 2009-05 provides clarification that in circumstances in which a quoted price in an active market for the identical liability is not available, a reporting entity is required to measure fair value using certain techniques. ASU 2009-05 also clarifies that when estimating the fair value of a liability, a reporting entity is not required to include a separate input or adjustment to other inputs relating to the existence of a restriction that prevents the transfer of a liability. ASU 2009-05 also clarifies that both a quoted price in an active market for the identical liability at the measurement date and the quoted price for the identical liability when traded as an asset in an active market when no adjustments to the quoted price of the asset are required are Level 1 fair value measurements. The new guidance is effective for interim and

[Table of Contents](#)

annual periods beginning after August 27, 2009, and applies to all fair-value measurements of liabilities required by GAAP. The Company is currently assessing the impact of the adoption of ASU 2009-05.

In October 2009, the FASB issued ASU 2009-13, "Multiple-Deliverable Revenue Arrangements," (amendments to FASB ASC Topic 605, Revenue Recognition) (ASU 2009-13). ASU 2009-13 requires entities to allocate revenue in an arrangement using estimated selling prices of the delivered goods and services based on a selling price hierarchy. The amendments eliminate the residual method of revenue allocation and require revenue to be allocated using the relative selling price method. ASU 2009-13 should be applied on a prospective basis for revenue arrangements entered into or materially modified in fiscal years beginning on or after June 15, 2010, with early adoption permitted. The Company is currently assessing the impact of the adoption of ASU 2009-13.

7. NET LOSS PER COMMON SHARE

Net loss per common share is presented in accordance with the provisions of FASB ASC 260, "Earnings Per Share" ("EPS"). Basic EPS excludes dilution for potentially dilutive securities and is computed by dividing net loss attributable to common stockholders by the weighted average number of common shares outstanding during the period. Diluted EPS gives effect to dilutive options, warrants and other potential common shares outstanding during the period. Diluted net loss per common share is equal to the basic net loss per common share since all potentially dilutive securities are anti-dilutive for each of the periods presented. Potential common stock equivalents excluded consist of stock options and warrants which are summarized as follows:

	September 30,	
	2009	2008
Common stock options	2,038,073	1,949,616
Warrants	1,297,985	1,124,544
Total	<u>3,336,058</u>	<u>3,074,160</u>

8. STOCK-BASED COMPENSATION

The Company has one stock-based compensation plan which allows the Board of Directors to grant incentives to employees, consultants, directors, officers and collaborating scientists in the form of incentive stock options, non-qualified stock options and restricted stock awards. The Company also has two other stock-based compensation plans pursuant to which stock options are outstanding but from which no new grants may be made.

Stock awards under the Company's stock option plans have been granted at prices which are no less than the closing price of the stock on the date of the grant. Options granted under the 2005 Stock Incentive Plan (2005 Plan), are generally time-based or performance-based and vesting varies accordingly. Options under this Plan expire in up to a maximum of ten years from the date of grant. Since the Company adopted the 2005 Plan, awards may not be granted under the Company's previous stock option plans.

The compensation expense recognized in the Statement of Operations in the third quarter of 2009 and 2008 for stock options amounted to \$185 (of which \$25 relates to performance milestones) and \$69 (of which \$20 relates to performance milestones), respectively. For the nine months ended September 30, 2009 and 2008, compensation expense for stock options amounted to \$411 (of which \$38 relates to performance milestones) and \$248 (of which \$73 relates to performance milestones), respectively. Cash received from options and warrants exercised under all share-based payment arrangements for the three months ended September 30, 2009 and 2008 was \$158 and \$21, respectively, and for the nine month periods ended September 30, 2009 and 2008, was \$289 and \$45, respectively.

[Table of Contents](#)

The fair value of each option award granted is estimated on the date of grant using the Black-Scholes option valuation model and assumptions as noted in the following table:

	For the Nine Months Ended September 30, 2009	For the Nine Months Ended September 30, 2008
Expected life	5 years	5 years
Expected volatility	60-65%	60%
Risk-free interest rate	1.69-2.67%	2.95-3.72%
Dividend yield	0%	0%

The expected life of the options is based on the observed and expected time to post-vesting, forfeiture and exercise. Groups of employees that have similar historical exercise behavior are considered separately for valuation purposes. Starting with the three months ended September 30, 2009, the expected volatility percentage is stated as calculated rather than as implied. The expected volatility assumptions were determined based upon the historical volatility of the Company's daily closing stock price. The calculated expected volatility approximates implied volatility from other publicly-traded stock that was established at the time of our IPO. The risk-free interest rate is based on the continuous rates provided by the U.S. Treasury with a term equal to the expected life of the option. The expected dividend yield is zero as the Company has never paid dividends and does not currently anticipate paying any in the foreseeable future.

At September 30, 2009, stock options to purchase 2,038,073 shares of common stock at exercise prices ranging from \$0.46 to \$8.32 per share were outstanding and exercisable at various dates through 2018.

During the three and nine months ended September 30, 2009, the weighted average fair value of options granted, estimated as of the grant date using the Black-Scholes option valuation model, was \$4.01 and \$3.80, respectively. For the three and nine month periods ended September 30, 2008, the weighted average fair value of options granted was \$5.57 and \$3.87, respectively.

The status of the Company's stock option plans at September 30, 2009 is summarized in the following table:

	Number of Shares	Weighted Average Exercise Price per Share	Weighted Average Remaining Contractual Term in Years	Aggregate Intrinsic Value
Outstanding at December 31, 2008	2,069,080	\$ 4.39	5.8	
Granted	112,600	6.88	4.7	
Exercised	(83,607)	2.01	—	
Forfeited or expired	(60,000)	4.64	—	
Outstanding at September 30, 2009	<u>2,038,073</u>	\$ 4.62	5.3	\$ 10,107
Vested and exercisable at September 30, 2009	<u>798,210</u>	\$ 4.65	3.4	\$ 3,933

Range of Exercise Prices	Options Outstanding			Options Exercisable	
	Number Outstanding	Weighted- Average Remaining Contractual Life	Weighted Average Exercise Price	Number Exercisable	Weighted- Average Exercise Price
\$.01-\$.46	90,000	0.2 years	\$.46	65,000	\$.46
\$.47-\$ 1.00	65,971	2.6 years	\$ 1.00	65,971	\$ 1.00
\$ 1.01-\$ 8.32	1,882,102	5.6 years	\$ 4.95	667,239	\$ 5.42
\$.01-\$ 8.32	<u>2,038,073</u>	5.3 years	\$ 4.62	<u>798,210</u>	\$ 4.65

For the three and nine months ended September 30, 2009, the total intrinsic value of options exercised was \$300 and \$428, respectively. For the three and nine months ended September 30, 2008, the total intrinsic value of options exercised was \$266 and \$384, respectively.

[Table of Contents](#)

As of September 30, 2009, of the total 2,038,073 options outstanding, 1,239,863 have not vested. Of this total unvested amount, 905,263 will vest upon the attainment of certain milestones, and the balance will vest over the requisite service period. The weighted average vesting period for the non-milestone, non-vested awards not yet recognized is 2.1 years.

As of September 30, 2009, of the \$3,195 of total unrecognized compensation cost related to unvested options to be recognized, \$2,715 is to be recognized over a period to be determined by performance-based milestones, and \$480 is to be recognized over the requisite service period through 2013.

As of September 30, 2009, there were 1,315,051 shares available for future grants under the Company's 2005 Plan.

9. COMMITMENTS AND CONTINGENCIES

The Company is party to a non-cancelable operating lease for office space expiring in January 2011. The lease is subject to escalations for increases in operating expenses. A second lease for office and laboratory space that expired on September 30, 2009 has been continued on a month-to-month basis.

On July 14, 2009, the Company entered into a seven year lease agreement for 19,957 square feet of office and laboratory space in Irvington, NY replacing the 10,300 square feet of space currently occupied by the Company. The Company will continue to occupy space under the building leases in effect as of September 2009 until the new space is ready for occupancy. The approximate aggregate minimum future payments under the existing leases and this new lease, which will be effective no later than January 1, 2010, are due as follows:

<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014-16</u>
\$ 85	\$ 356	\$ 384	\$ 412	\$ 441	\$ 1,329

In January 2006, the Company entered into an agreement with ASKION GmbH ("ASKION") to produce and test commercial-grade MelaFind[®] hand-held imaging device systems. The Company expects to maintain a relationship, which has evolved into a month-to-month agreement, with ASKION and continue with production and development activities throughout 2009 and into 2010.

In August of 2006, the Company engaged Carl Zeiss Jena GmbH on usual commercial terms to build the lenses and assemblies, as well as provide certain technical consulting services for the MelaFind[®] units. The Company expects Carl Zeiss Jena GmbH to continue to supply lenses and assemblies through ASKION for commercialization units throughout 2009 and into 2010.

The Company has an employment agreement with its President and Chief Executive Officer, Dr. Gulfo, which provides for an annual base salary, stock options and discretionary performance bonuses. The agreement, which provides for automatic one-year renewal terms, currently runs through the end of 2009. In July 2009, and effective March 1, 2009, the Board of Directors increased Dr. Gulfo's annual base salary to \$313.6 and awarded him a bonus of \$150.

The Company is not currently subject to any material legal proceedings, nor to management's knowledge is any material legal proceeding threatened against the Company.

10. STOCKHOLDERS' EQUITY

On October 31, 2006, the Company entered into securities purchase agreements and a registration rights agreement with certain accredited investors for the private placement of 2,312,384 shares of the Company's common stock and warrants to purchase up to 346,857 shares of the Company's common stock for aggregate gross proceeds of approximately \$13.2 million and net proceeds of approximately \$12.5 million. Pursuant to the securities purchase agreements, for a purchase price of \$5.70 each investor received one share of the Company's common stock and a warrant to purchase 0.15 of a share of the Company's common stock. The warrants are five-year warrants with an exercise price of \$6.70 per share.

[Table of Contents](#)

On July 31, 2007, the Company entered into a securities purchase agreement and a registration rights agreement with certain accredited investors for the private placement of 2,000,178 shares of the Company's common stock and warrants to purchase up to 500,041 shares of the Company's common stock for aggregate gross proceeds of approximately \$11.5 million and net proceeds of approximately \$10.7 million. The private placement closed August 3, 2007. Pursuant to the securities purchase agreement, for a purchase price of \$5.75 each investor received one share of the Company's common stock and a warrant to purchase 0.25 of a share of common stock. The warrants are five-year warrants with an exercise price of \$8.00 per share.

Both of these private placements were completed pursuant to an exemption from registration provided by Section 4(2) of the Securities Act of 1933, as amended, and Regulation D promulgated thereunder. Pursuant to the terms of the registration rights agreements, the Company filed resale registration statements covering the shares issued in both private placements, including the shares issuable upon exercise of the warrants, with the SEC. In the event that the Company fails to maintain the effectiveness of these registration statements for the periods described in the registration rights agreements, the holders would be entitled to certain monetary damages. However, in no event is the Company obligated to make payments in excess of 10% of the aggregate purchase price of the common shares. The Company has concluded that it is unlikely that the Company would be required to remit any payments to its investors for failing to maintain its effectiveness. The Company's resale registration statements on Forms S-3 were declared effective by the SEC (file #333-139056 and file #333-145740) on February 12, 2007 and September 11, 2007, respectively.

On June 26, 2008, the Company filed a Form S-3 shelf registration statement for an indeterminate number of shares of common stock, warrants to purchase shares of common stock and units consisting of a combination thereof having an aggregate initial offering price not to exceed \$40 million. The SEC declared the registration statement effective on July 7, 2008. Management utilized this shelf registration statement to raise additional equity capital by completing a registered direct offering of 2,088,451 shares of the Company's common stock for aggregate gross proceeds of approximately \$11.9 million (approximately \$11 million net proceeds) to the Company at a per share offering price of \$5.68. The offering closed August 8, 2008.

On July 16, 2009, the Company utilized the shelf registration to complete a registered direct offering of 2,400,000 shares of the Company's common stock with a select group of institutional investors. The aggregate gross proceeds from the offering were \$15 million (approximately \$13.75 million of net proceeds). The offering closed on July 22, 2009 for a purchase price of \$6.25 per share of the Company's common stock. Approximately \$13.1 million remains available for sale under the shelf registration statement as of September 30, 2009.

On May 7, 2009, the Company entered into a committed equity financing facility ("CEFF") with Kingsbridge Capital Limited, pursuant to which Kingsbridge committed to purchase from time to time at the Company's sole discretion, up to the lesser of \$45 million or 3,327,000 shares of the Company's common stock, prior to May 7, 2012 subject to various conditions for individual sales, including dollar, timing, and trading volume limitations, a minimum market per share price, and other contractual and regulatory requirements. There is no assurance that the Company will satisfy all the various conditions for individual sales enabling it to use all of the CEFF. In connection with this CEFF, the Company issued a 5 year warrant, exercisable as of November 7, 2009, to Kingsbridge to purchase up to 200,000 shares of our common stock at an exercise price of \$11.35 per share.

Under the CEFF, during August and September of 2009, the Company sold 862,201 shares of common stock to Kingsbridge Capital Limited, at an average per share price of approximately \$9.25, for gross proceeds of \$7.977 million. A proportionate share of the CEFF originating expenses was allocated to this sale from deferred offering costs. Net of expenses, proceeds from this sale were approximately \$7.928 million. As of September 30, 2009, legal, accounting, and other costs associated with this agreement approximating \$140 have been deferred and will be charged to equity as a reduction of proceeds from the CEFF or operations should management decide to abandon the CEFF.

[Table of Contents](#)

Subsequent to September 30, 2009 and through November 5, 2009, also under the CEFF, the Company sold 962,740 shares of common stock to Kingsbridge Capital Limited, at an average per share price of approximately \$9.23, for gross proceeds of \$8.886 million. A proportionate share of the CEFF originating expenses was allocated to this sale from deferred offering costs. Net of expenses, proceeds from this sale were approximately \$8.831 million (see also Note 14). Following this sale, legal, accounting, and other costs associated with this agreement approximating \$86 have been deferred and will be charged to equity as a reduction of proceeds from the CEFF or operations should management decide to abandon the CEFF.

As of September 30, 2009, the Company had 10,000,000 shares of \$0.10 par value preferred stock authorized with no shares issued and outstanding.

11. WARRANTS

Warrants outstanding at September 30, 2009 include a 5-year warrant to purchase 75,000 shares of the Company's common stock at an exercise price of \$7.00 per share issued to one of the Company's consultants in 2004, which expires in November of 2009. Also outstanding at September 30, 2009, are 5-year warrants to purchase an aggregate of 47,962 shares of the Company's common stock at an exercise price of \$4.52 per share, which expire in November of 2009.

In connection with the Company's IPO which closed on November 2, 2005, the Company issued 150,000 warrants to the underwriters to purchase shares of the Company's common stock at \$6.25 per share, which became exercisable on October 28, 2006, and expire November of 2010. At September 30, 2009, 143,125 of these warrants remain outstanding.

Additionally, as previously discussed, in connection with the Company's two private placement financings the following warrants have been granted and remain outstanding as of September 30, 2009: (also see Note 14.)

Financing that closed November 3, 2006: warrants to purchase up to 346,857 shares of the Company's common stock were issued. At September 30, 2009, 331,857 of these warrants remain outstanding. These warrants are five-year warrants with an exercise price of \$6.70 per share,

Financing that closed August 3, 2007: warrants to purchase up to 500,041 shares of the Company's common stock were issued. At September 30, 2009, 500,041 of these warrants remain outstanding. The warrants are five-year warrants with an exercise price of \$8.00 per share.

In connection with the May 7, 2009 CEFF with Kingsbridge, the Company issued a 5 year warrant, exercisable as of November 7, 2009, to Kingsbridge to purchase up to 200,000 shares of our common stock at an exercise price of \$11.35 per share, with a Black Scholes Fair Value of \$678.

Cash received for warrants exercised during the three and nine months ended September 30, 2009 was \$21 and \$122 respectively. Cash received for warrants exercised during the three and nine months ended September 30, 2008 was \$11 and \$11 respectively.

12. RELATED PARTY CONSULTING AGREEMENTS

The Company has in place the following consulting agreements with related parties:

Consulting Agreement with Breaux Castleman

In June 2003, the Company entered into a consulting agreement with Breaux Castleman, the Chairman of the Company's Board of Directors, for consulting services related to the FDA approval of MelaFind[®], and the Company's business and financial strategy. Under this agreement, Mr. Castleman receives compensation for each month of services rendered. The Company made payments, pursuant to this consulting agreement, of \$6 in each of the three month periods ended September 30, 2009 and 2008 and \$18 in each of the nine month periods ended September 30, 2009 and 2008. This consulting agreement is terminable by either party by providing thirty days' prior written notice.

Consulting Agreement with Marek Elbaum, Ph.D.

Effective as of May 31, 2005, the Company retained Marek Elbaum, Ph.D., the Company's founder and former President and Chief Science and Technology Officer, as the Company's Chief Scientist. In consideration of the services to be provided, the Company agreed to pay Dr. Elbaum a monthly fee of \$15.

In May of 2007 and effective June 1, 2007, Dr. Elbaum and the Company entered into an amended agreement. Under the terms of the amended agreement, Dr. Elbaum was paid a monthly fee of \$9 through January 2009 when the contract terminated.

Consulting Agreement with Robert Friedman, M.D.

The Company has retained the services of Robert Friedman, M.D. as a consultant, medical advisor to the Company's Board of Directors, and in connection with the clinical testing of MelaFind[®]. In consideration for these services, Dr. Friedman is being paid at a rate of \$5 for each day of service.

This consulting agreement continues to automatically renew for successive one-year terms unless either party terminates the agreement at least 30 days prior to its expiration. The Company made no payments to Dr. Friedman for the three month period ending September 30, 2009, and \$40 for the nine month period ending September 30, 2009. The Company made payments to Dr. Friedman totaling \$33 for the three month period ending September 30, 2008, and \$60 for the nine month period ending September 30, 2008.

Consulting Agreement with Gerald Wagner, Ph.D.

Effective April 1, 2006, the Company entered into an amended and restated consulting agreement with Gerald Wagner, Ph.D., a member of the Company's Board of Directors and its former Acting Chief Operating Officer. Under this amended consulting agreement, the Company agreed to pay Dr. Wagner the annual amount of \$180 payable monthly over the term of the agreement. In addition, in connection with his ongoing engagement as a consultant, Dr. Wagner received a stock option grant of 50,000 shares of the Company's common stock which vested upon commencement of the pivotal trial for MelaFind[®] in January 2007. In addition, on March 24, 2006, Dr Wagner received another stock option grant of 49,500 shares of the Company's common stock which vested immediately.

With the start of the Company's pivotal clinical trial in January 2007, Dr. Wagner transitioned out of his role as the Company's acting Chief Operating Officer and entered into an amended and restated consulting contract with the Company. Under the terms of the amended contract, Dr. Wagner is paid a monthly retainer of \$2.5 and will be paid \$2.5 for each additional consulting day. This amended agreement will end at the option of Dr. Wagner or the Company at any time, by providing fifteen days' prior written notice, or immediately upon the mutual agreement of the Company and Dr. Wagner. The Company incurred consulting costs pursuant to this agreement of \$7.5 in the three month period and \$22.5 in the nine month period ended September 30, 2009. The Company incurred consulting costs pursuant to this agreement of \$38 in the three month period and \$60 in the nine month period ended September 30, 2008.

Consulting Agreement with Anne Egger

In March 2009, the Company entered into a consulting agreement with Anne Egger for certain consulting services primarily focusing on physician advocacy. The agreement was for an initial term of three months, has subsequently been extended to run through October 2010, and may be terminated by either party with 30 days notice. Under the terms of the agreement, Ms. Egger is entitled to receive a consulting fee of \$1.6 per day. Ms. Egger was appointed to the Company's Board of Directors as of June 10, 2009. During the three and nine month periods ended September 30, 2009, Ms. Egger was paid \$31 and \$50, respectively, under this agreement.

13. OTHER INCOME

During March 2007, the Company entered into an agreement with L'Oreal to study and assess the feasibility of using EOS' novel multi-spectral imaging technology for the evaluation and differentiation of pigmented skin lesions of cosmetic importance. EOS has granted L'Oreal an option to take an exclusive license to use EOS technology in the field covered by the research, on terms to be mutually agreed. The option expired June 30, 2009. On December 16, 2008, L'Oreal and the Company agreed on a second amendment to the agreement, for a new three month study. The laboratory and clinical research is being funded by L'Oreal. Pursuant to the agreement, L'Oreal is responsible for all costs and expenses incurred in connection with the feasibility program, and will reimburse EOS for expenses incurred by EOS with respect to the feasibility program. The work to be carried out under the agreement has been completed. During the three and nine month periods ended September 30, 2009, the Company did not earn other income from L'Oreal under the feasibility program. During the three and nine month periods ended September 30, 2008, the Company earned other income of \$45 and \$98, respectively.

During April 2005, the Company discontinued all operations associated with its DIFOTI[®] product in order to focus its resources and attention on the development and commercialization of MelaFind[®]. During December 2006, the Company entered into a sale and exclusive licensing agreement with KaVo Dental GmbH ("KaVo"), a leading dental equipment manufacturer, which provides for KaVo to further develop and commercialize DIFOTI[®]. Beginning in July 2008, KaVo is required to pay to the Company a royalty stream based upon the worldwide aggregate net sales of the licensed product, as defined in the license agreement, or a set minimum. During the year ended December 31, 2008, the Company earned \$10 as the pro rated portion of the minimum royalty. For the three and nine month periods ended September 30, 2009, the Company accrued royalty income of \$5 and \$15, respectively.

14. SUBSEQUENT EVENTS

The following are subsequent events of the Company during the period of October 1, 2009 through the date and time the financial statements were issued on November 9, 2009:

Under the May 7, 2009 CEFF with Kingsbridge Capital Limited, subsequent to September 30, 2009 and through November 5, 2009, the Company has sold 962,740 shares of Company common stock at an average per share price of approximately \$9.23, for gross proceeds of \$8.886 million. A proportionate share of the CEFF originating expenses was allocated to this sale from deferred offering costs. Net of expenses, proceeds from this sale were approximately \$8.831 million.

To date, the Company has sold 1,824,941 shares under the CEFF leaving 1,502,059 shares available for sale under the CEFF, exclusive of the 200,000 outstanding warrants held by Kingsbridge.

On October 20, 2009, warrants to purchase 67,581 shares of the Company's common stock, issued in connection with the private placement financing that closed in November 2006, were exercised. The exercise of these warrants at \$6.70 per common share, resulted in approximately \$453 of proceeds to the Company.

[Table of Contents](#)

Also on October 20, 2009, warrants to purchase 37,050 shares of the Company's common stock, issued in connection with the private placement financing that closed in August 2007, were exercised. The exercise of these warrants at \$8.00 per common share, resulted in approximately \$296 of proceeds to the Company.

On October 22, 2009, warrants to purchase 90,313 shares of the Company's common stock, issued in connection with the private placement financing that closed in November 2006, were exercised. The exercise of these warrants at \$6.70 per common share, resulted in approximately \$605 of proceeds to the Company.

Also on October 22, 2009, warrants to purchase 50,450 shares of the Company's common stock, issued in connection with the private placement financing that closed in August 2007, were exercised. The exercise of these warrants at \$8.00 per common share, resulted in approximately \$404 of proceeds to the Company.

ITEM 2.

**ELECTRO-OPTICAL SCIENCES, INC.
MANAGEMENT'S DISCUSSION AND ANALYSIS
OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

This management's discussion and analysis of financial condition and results of operations is intended to provide information to help you better understand and evaluate our financial condition and results of operations. We recommend that you read this section in conjunction with our unaudited condensed financial statements and accompanying notes included under Part I, Item 1 of this Quarterly Report and our audited financial statements and accompanying notes in our Annual Report on Form 10-K for the year ended December 31, 2008.

This quarterly report on Form 10-Q, including the following discussion and analysis of financial condition and results of operations, contains forward-looking statements that you should read in conjunction with the financial statements and notes to financial statements that we have included elsewhere in this report. These statements are based on our current expectations, assumptions, estimates and projections about our business and our industry, and involve known and unknown risks, uncertainties, and other factors that may cause our or our industry's results, levels of activity, performance or achievements to be materially different from any future results, levels of activity, performance or achievements expressed or implied in, or contemplated by, the forward-looking statements. Words such as "believe," "anticipate," "expect," "intend," "plan," "will," "may," "should," "estimate," "predict," "potential," "continue," or the negative of such terms or other similar expressions, identify forward-looking statements. Our actual results and the timing of events may differ significantly from the results discussed in the forward-looking statements, and you should not place undue reliance on these statements. Factors that might cause such a difference include those discussed below under the heading "Risk Factors," as well as those discussed elsewhere in this quarterly report on Form 10-Q. We disclaim any intent or obligation to update any forward-looking statements as a result of developments occurring after the period covered by this report or otherwise.

Overview

We are a medical device company focused on the design and development of a non-invasive, point-of-care instrument to assist in the early diagnosis of melanoma. Our flagship product, MelaFind[®], features a hand-held imaging device that emits multiple wavelengths of light to capture images of suspicious pigmented skin lesions and extract data. The data are then analyzed utilizing image processing classification algorithms, 'trained' on our proprietary database of melanomas and benign lesions, to provide information to assist in the management of the patient, including information useful in the decision of whether to biopsy the lesion. We currently do not have any commercialized products or any significant source of revenue.

We commenced operations in December 1989 as a New York corporation and re-incorporated as a Delaware corporation in September 1997. Since our inception, we have generated significant losses. As of September 30, 2009, we had an accumulated deficit of \$73.6 million. We expect to continue to spend significant amounts on the development and commercialization of MelaFind[®].

Our revenue for the foreseeable future will depend on the approval and commercialization of MelaFind[®] and may vary substantially from year to year and quarter to quarter. Our operating expenses may also vary substantially from year to year and quarter to quarter based on the timing of activities and approvals.

On February 13, 2009, the Company announced that a third-party, independent bio-statistician had provided positive top line results from the MelaFind[®] pivotal clinical trial. This blinded study was conducted at seven clinical sites and included 1,831 pigmented skin lesions from 1,383 patients.

On June 3, 2009, the Company submitted the MelaFind[®] Pre-market Approval Application ("PMA") to the U.S. Food and Drug Administration ("FDA"), which the FDA has previously indicated will receive expedited review. Expedited review means that upon filing the PMA application, the FDA will conduct a team review, prioritize the application, and allocate sufficient resources toward a 180 day review period.

[Table of Contents](#)

While the expedited review could shorten the MelaFind® FDA approval process, the Company can provide no assurances that this will be the case.

The Company was notified by the FDA, pursuant to the submission of the MelaFind® Pre-Market Approval Application on June 3, 2009, that the application was suitable for filing, and the official filing date is June 9, 2009. The MelaFind® PMA is under review at the FDA, and the Company is actively working with the FDA during this process. The date for an anticipated FDA Advisory Panel to review the MelaFind® PMA has not been established, therefore, we expect the review of the MelaFind® PMA to continue into 2010.

We believe that period-to-period comparisons of our results of operations may not be meaningful and should not be relied on as indicative of our future performance.

Liquidity and Capital Resources

On July 31, 2007, the Company entered into a securities purchase agreement and a registration rights agreement with certain accredited investors for the private placement of 2,000,178 shares of the Company's common stock and warrants to purchase up to 500,041 shares of the Company's common stock for aggregate gross proceeds of approximately \$11.5 million and net proceeds of approximately \$10.7 million. This transaction closed August 3, 2007.

On June 26, 2008, the Company filed a Form S-3 shelf registration statement for an indeterminate number of shares of common stock, warrants to purchase shares of common stock and units consisting of a combination thereof having an aggregate initial offering price not to exceed \$40 million. The SEC declared the registration statement effective on July 7, 2008. Management utilized this shelf registration statement to raise additional equity capital by completing a registered direct offering of 2,088,451 shares of the Company's common stock for aggregate gross proceeds of approximately \$11.9 million (approximately \$11 million net proceeds) to the Company at a per share offering price of \$5.68. The offering closed August 8, 2008.

On May 7, 2009, the Company entered into a committed equity financing facility ("CEFF"), with Kingsbridge Capital Limited, pursuant to which Kingsbridge committed to purchase, subject to certain conditions, up to the lesser of \$45 million or 3,327,000 shares of the Company's common stock. In connection with this CEFF, the Company issued a 5 year warrant, exercisable as of November 7, 2009, to Kingsbridge to purchase up to 200,000 shares of our common stock at an exercise price of \$11.35 per share (refer to Note 10 for further details). The Company registered for resale on Form S-3 3,527,000 of its common shares under this financing arrangement. The registration statement was declared effective by the SEC on May 22, 2009.

On July 16, 2009, the Company completed, pursuant to the Company's shelf registration statement on Form S-3, a registered direct offering of 2,400,000 shares of the Company's common stock with a select group of institutional investors. The aggregate gross proceeds from the offering were \$15 million (with net proceeds of approximately \$13.75 million). The offering closed on July 22, 2009 for a purchase price of \$6.25 per share of the Company's common stock. Approximately \$13.1 million remains available for sale under the Company's shelf registration statement as of September 30, 2009.

Under the CEFF, during August and September of 2009, the Company sold 862,201 shares of common stock to Kingsbridge Capital Limited, at an average per share price of approximately \$9.25, for gross proceeds of \$7.977 million. A proportionate share of the CEFF originating expenses was allocated to this sale from deferred offering costs. Net of expenses, proceeds from this sale were approximately \$7.928 million.

Subsequent to September 30, 2009 and through November 5, 2009, also under the CEFF, the Company sold 962,740 shares of common stock to Kingsbridge Capital Limited, at an average per share price of approximately \$9.23, for gross proceeds of \$8.886 million. A proportionate share of the CEFF originating expenses was allocated to this sale from deferred offering costs. Net of expenses, proceeds from this sale were approximately \$8.831 million (see also Note 14).

[Table of Contents](#)

Most of our expenditures to date have been for research and development activities and general and administrative expenses. Research and development expenses represent costs incurred for product development, clinical trials, activities related to regulatory filings, and manufacturing development efforts. We expense all of our research and development costs as they are incurred.

To date, we have not borrowed (other than by issuing convertible notes, all of which have been converted into equity) or financed our operations through equipment leases, financing loans or other debt instruments.

As of September 30, 2009, the Company's total of cash, cash equivalents was \$24.8 million. The existing cash balances and the availability of the Kingsbridge CEFF, will allow the Company to fund anticipated levels of operations for at least the next twelve months. However, there can be no assurances that the Company will be able to raise funds as needed from time to time, whether under the CEFF or by other types of financing. Funds that become available may not be on acceptable terms, and there can be no assurance that any additional funding that the Company does obtain will be sufficient to meet the Company's needs in the long term.

Our cash and cash equivalents at September 30, 2009 are liquid investments in money market accounts and deposits with commercial banks, which are held in amounts that substantially exceed FDIC limits.

Cash Flows from Operating Activities (in thousands)

Net cash used in operations was \$12,271, for the nine months ended September 30, 2009. For the corresponding period in 2008, net cash used in operations was \$12,069. In both periods, cash used in operations was attributable to net losses, after an adjustment for non-cash charges related to depreciation/amortization and share-based compensation, and other changes in operating assets and liabilities.

Cash Flows from Investing Activities

For the nine months ended September 30, 2009, there was \$152 net cash provided by our investing activities. For the corresponding period in 2008, net cash provided by our investing activities was \$636. In 2009, cash provided was related to the redemption of marketable securities offset by leasehold improvements, the purchase of information technology equipment, and the purchase of manufacturing related equipment in support of MelaFind[®]. In 2008, cash provided was related to the redemption of marketable securities offset by the purchase of information technology and manufacturing related equipment.

Cash Flows from Financing Activities

For the nine months ended September 30, 2009, net cash provided by financing activities was \$21,827. Cash was provided by net proceeds received from the sale of common stock under the Company's July 2009 registered direct offering (\$13.75 million), from the exercise of options and warrants (\$289), and from the sale of common stock under the CEFF with Kingsbridge Capital (\$7.977 million) offset by \$190 of deferred offering costs related to the CEFF transaction. For the nine months ended September 30, 2008, net cash provided by financing activities was \$11,013, representing the exercise of options and warrants (\$45) and the net proceeds of the June 2008 registered direct offering (\$10,968).

Operating Capital and Capital Expenditure Requirements

We face certain risks and uncertainties, which are present in many emerging medical device companies. At September 30, 2009, we had an accumulated deficit of \$73.6 million. To date, we have not commercialized our principal product, MelaFind[®]. We anticipate that we will continue to incur net losses for the foreseeable future as we pursue regulatory approvals for MelaFind[®], continue to develop the MelaFind[®] system, expand our corporate infrastructure, and prepare for the potential commercial launch of MelaFind[®].

[Table of Contents](#)

We do not expect to generate significant product revenue until we successfully obtain PMA approval for and begin selling MelaFind[®].

If additional funds are raised through the issuance of debt securities or preferred stock, these securities could have rights senior to those associated with our common stock and could contain covenants that would restrict our operations. If we are unable to obtain additional financing, we may be required to reduce the scope of, delay or eliminate some or all of planned product research and development and commercialization activities, which could harm our business.

Because of the numerous risks and uncertainties associated with the development of medical devices such as MelaFind[®], we are unable to estimate the exact amounts of capital outlays and operating expenditures associated with our current and anticipated clinical trials. Our future funding requirements will depend on many factors, including, but not limited to:

- The schedule, costs, and results of our clinical trials;
- The success of our research and development efforts;
- The costs and timing of regulatory approval;
- Reimbursement amounts for the use of MelaFind[®] that we are able to obtain from Medicare and third party payers, or the amount of direct payments we are able to obtain from patients and/or physicians utilizing MelaFind[®];
- The cost of commercialization activities, including product marketing and building a domestic direct sales force;
- The emergence of competing or complementary technological developments;
- The costs of filing, prosecuting, defending and enforcing any patent claims and other rights, including litigation costs and the results of such litigation;
- The costs involved in defending any patent infringement actions brought against us by third parties; and
- Our ability to establish and maintain any collaborative, licensing or other arrangements, and the terms and timing of any such arrangements.

Contractual Obligations (in thousands)

The Company is party to a non-cancelable operating lease for 2,800 and 2,500 square feet of office space expiring in January 2011. The lease is subject to escalations for increases in operating expenses. A second lease for 5,000 square feet of office and laboratory space, that expired on June 30, 2009, has been continued on a month-to-month basis.

On July 14, 2009, the Company entered into a new lease agreement for 19,957 square feet of office and laboratory space. The following table summarizes our outstanding contractual obligations as of September 30, 2009, adjusted to give effect to the July 14, 2009 lease agreement.

	<u>Total</u>	<u>Less than 1 year</u>	<u>1-3 years</u>	<u>4-5 years</u>	<u>More than 5 years</u>
Operating leases	\$3,008	\$ 351	\$ 782	\$ 888	\$ 987

Results of Operations (in thousands)

Through the first nine months of 2009, the Company announced positive top line results from the pivotal clinical trial, submitted the MelaFind[®] PMA to the FDA, continued the development of processes and equipment to allow for the efficient manufacturing of MelaFind[®], and focused on increasing corporate capabilities to meet the needs of product launch.

The Company was notified by the FDA, pursuant to the submission of the MelaFind[®] Pre-Market Approval Application on June 3, 2009, that the application was suitable for filing, and the official filing date is June 9, 2009. The MelaFind[®] PMA is under review at the FDA, and the Company is actively working with the FDA during this process. The date for an anticipated FDA Advisory Panel to review the MelaFind[®] PMA has not been established, therefore, we expect the review of the MelaFind[®] PMA to continue into 2010.

Three Months Ended September 30, 2009 Compared to Three Months Ended September 30, 2008

Research and Development Expense

Research and development expense overall decreased 16% for the three month period ended September 30, 2009 compared to the same period ended September 30, 2008. The R&D costs were refocused from clinical to regulatory principally attributable to:

- clinical studies costs — in the third quarter of 2009 the pivotal trial study sites were shut down leaving only ongoing data acquisition sites. In the third quarter of 2008, all sites of the pivotal clinical trial data acquisition phase were fully engaged. Clinical studies costs decreased \$343.
- quality and regulatory costs — were increased in the third quarter of 2009 with activities in support of the review of our PMA, making extensive use of consultants to assist in this process. Quality and regulatory costs increased \$48 period to period.
- development activities — in the third quarter of 2009, we experienced a significant decrease in design and process development costs for MelaFind[®] as the product had become defined and finalized. There were more extensive development efforts of 2008. Development costs decreased \$229 from the prior year.

General and Administrative Expense

General and administrative expenses consist primarily of salaries and related expenses of general corporate activities, certain costs associated with our efforts to obtain PMA approval for MelaFind[®] and development of a commercial infrastructure to market and sell MelaFind[®] when approved.

General and Administrative expense for the three months ended September 30, 2009 increased 117% as compared to the same period ended September 30, 2008. This increase is reflective of:

- pre-marketing activities intensified during the third quarter of 2009 following the submission of the MelaFind[®] PMA. in June. There were limited pre-marketing efforts during the nine month period ended September 30, 2008 while the data acquisition phase of the pivotal clinical trial continued. Pre-marketing expenses in 2009 increased \$492 over the same period in 2008.
- in the third quarter of 2009 there were increased legal activities relating to regulatory requirements and patent activities associated with protecting MelaFind[®] intellectual property. Legal and patent expense increased \$108 over the same period a year earlier.
- information technology department upgrades and other one-time staffing related employee costs increased general and administrative related costs \$466 in the three months ending September 30, 2009 over the same period a year earlier. For the quarter, non-cash expenses of depreciation and share-based compensation were \$94 higher in 2009 than in 2008.

Nine Months Ended September 30, 2009 Compared to Nine Months Ended September 30, 2008

Research and Development Expense

Research and development expense overall decreased 24% for the nine month period ended September 30, 2009 compared to the same period ended September 30, 2008. The R&D costs were refocused from clinical to regulatory principally attributable to:

- clinical studies costs — in the first nine months of 2009 we closed down the pivotal clinical trial study sites which, in the same period in 2008, were fully engaged. Clinical studies costs decreased \$1,958 from the prior period.
- quality and regulatory — the nine month cost level was increased in 2009 as we intensified activities in support of the PMA submission and review, making extensive use of consultants to assist in this process. In the first nine months of 2008, we were not yet in the position to be preparing the PMA. Quality and regulatory costs increased \$701 over the prior period.
- development activities — in the first nine months of 2009, we experienced a significant decrease in design costs and process development for MelaFind[®] as the product had become defined and finalized through the more extensive development efforts of 2008. Development costs decreased \$1,101 from the prior period.

General and Administrative Expense

General and administrative expenses consist primarily of salaries and related expenses of general corporate activities, certain costs associated with our efforts to obtain PMA approval for MelaFind[®] and development of a commercial infrastructure to market and sell MelaFind[®].

General and Administrative expense for the nine months ended September 30, 2009 increased 35% as compared to the same period ended September 30, 2008. This increase is reflective of:

- pre-marketing activities accelerated throughout the first nine months of 2009 following announcement of positive top-line results from the pivotal clinical trial and particularly in the third quarter, following the submission of the MelaFind[®] PMA. There were limited pre-marketing efforts during the nine month period ended September 30, 2008, while the data acquisition phase of the pivotal clinical trial continued. Pre-marketing expenses increased \$603 over the prior period.
- in 2009 there has been increased legal and investor relations activities involving required disclosures and investor notification; such as the release of top-line results from our pivotal clinical trial and the submission of our PMA. Patent expenses have increased associated with protecting MelaFind[®] intellectual property. Legal, patent and investor relations expenses increased \$188 over the same period in 2008.
- information technology department upgrades and other one-time staffing related employee costs increased general and administrative related costs \$358 in the first nine months over the same period a year earlier. Non-cash expenses of depreciation and share-based compensation were \$234 higher in 2009 than in 2008 through nine months.

Critical Accounting Policies and Significant Judgments and Estimates

Our management's discussion and analysis of our financial condition and results of operations is based on our financial statements, which have been prepared in accordance with GAAP. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements as well as the reported revenues and expenses during the reporting periods. On an ongoing basis, we evaluate our judgments related to accounting estimates. We base our estimates on historical experience and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily

[Table of Contents](#)

apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

We believe that the following accounting policies and significant judgments and estimates relating to revenue recognition, stock-based compensation charges, and accrued expenses are most critical to aid you in fully understanding and evaluating our reported financial results.

Revenue Recognition

We currently do not have any commercialized products or any source of revenue.

Stock-Based Compensation

We record compensation expense associated with stock options and other forms of equity compensation in accordance with FASB ASC-718, *Stock Compensation* ("FASB 718"), as interpreted by SEC Staff Accounting Bulletins No. 107 and No.110. A compensation charge is recorded when it is probable that performance conditions will be satisfied. The probability of vesting is updated at each reporting period and compensation is adjusted via a cumulative catch-up adjustment or prospectively depending on the nature of the change.

We have also granted to certain employees stock options that vest with the attainment of development milestones not under the Company's control. Upon the attainment of the relevant development milestones, there will be a significant compensation charge based on the fair value of such options on the date granted.

Options or warrants issued to non-employees for goods or services are recorded at fair value and accounted for in accordance with FASB ASC 505, *Equity-based payments to non-employees*.

Accrued Expenses

As part of the process of preparing financial statements, we are required to estimate accrued expenses. This process involves identifying services that have been performed on our behalf and estimating the level of service performed and the associated cost incurred for such service where we have not been invoiced or otherwise notified of the actual cost. Examples of estimated accrued expenses include:

- professional service fees;
- contract clinical service fees;
- fees paid to contract manufacturers in conjunction with the production of clinical components or materials; and
- fees paid to third party data collection organizations and investigators in conjunction with the clinical trials.

In connection with such service fees, our estimates are most affected by our projections of the timing of services provided relative to the actual level of services incurred by such service providers. The majority of our service providers invoice us monthly in arrears for services performed. In the event that we do not identify certain costs that have begun to be incurred or we are under or over our estimate of the level of services performed or the costs of such services, our actual expenses could differ from such estimates. The date on which certain services commence, the level of services performed on or before a given date, and the cost of such services are often subjective determinations. We make these judgments based upon the facts and circumstances known to us in accordance with GAAP. This is done as of each balance sheet date in our financial statements.

Off-Balance Sheet Arrangements

We do not currently have, nor have we ever had, 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 engage in trading activities involving non-exchange traded contracts. As such, we are not materially exposed to any financing, liquidity, market or credit risk that could arise if we had engaged in these relationships.

Recently Adopted Accounting Pronouncements

In June 2009, the Financial Accounting Standards Board (FASB) issued guidance which is included in the Codification in FASB Accounting Standards Codification (ASC) 105, "Generally Accepted Accounting Principles." This guidance modifies the Generally Accepted Accounting Principles (GAAP) hierarchy by establishing only two levels of GAAP, authoritative and nonauthoritative accounting literature. Effective July 2009, the FASB ASC, also known collectively as the "Codification," is considered the single source of authoritative U.S. accounting and reporting standards, except for additional authoritative rules and interpretive releases issued by the SEC. This guidance is effective for financial statements issued for reporting periods that end after September 15, 2009. Where possible, FASB references have been replaced with ASC references.

As of January 1, 2009, the Company implemented the transition guidance related to FASB Staff Position (FSP) Emerging Issues Task Force (EITF) 03-6-1, "Determining Whether Instruments Granted in Share-Based Payment Transactions Are Participating Securities", which is included in the codification in ASC 260-10, "Earnings Per Share" (ASC 260-10). ASC 260-10 requires the Company to treat unvested deferred stock units as participating securities in accordance with the two-class method in the calculation of both basic and diluted earnings per share. ASC 260-10 must be applied retrospectively. The effect of the retrospective application of ASC 260-10 was not material to the Company's earnings per share in 2008, 2007 or 2006.

The Company has adopted FASB ASC 820-10, "Fair Value Measurements and Disclosures" ("ASC 820-10") with respect to its financial assets and liabilities. In February 2008, the FASB issued updated guidance related to fair value measurements, which is included in the Codification in ASC 820-10, Fair Value Measurements and Disclosures. The updated guidance provided a one year deferral of the effective date of ASC 820-10 for non-financial assets and non-financial liabilities, except those that are recognized or disclosed in the financial statements at fair value at least annually. The implementation of the non-financial items measured on a non-recurring basis did not have a material impact on the Company's financial statements.

In April 2008, the FASB issued ASC 350, "Intangibles-Goodwill and Other" (ASC 350). ASC 350 amends the factors that should be considered in developing renewal or extension assumptions used to determine the useful life of a recognized intangible asset. ASC 350 is effective for calendar-year companies beginning January 1, 2009. The requirement for determining useful lives must be applied prospectively to intangible assets acquired after the effective date and the disclosure requirements must be applied prospectively to all intangible assets recognized as of, and subsequent to, the effective date. The implementation of this standard did not have a material impact on the Company's financial statements.

In May 2009, the FASB issued guidance which is included in the Codification in ASC 855, "Subsequent Events" (ASC 855). This guidance establishes the accounting and disclosure of events that occur after the balance sheet date but before financial statements are issued or are available to be issued. It requires the disclosure of the date through which an entity has evaluated subsequent events and the basis for that date. This guidance is effective for interim or annual financial periods ending after June 15, 2009, and as such, became effective for the Company on June 30, 2009. We evaluated subsequent events through the date and time the financial statements were issued on November 9, 2009.

Recent Accounting Pronouncements

In June 2009, the FASB issued SFAS No. 167, "Amendments to FASB Interpretation No. 46(R)" (SFAS 167), which has not yet been codified in the ASC. SFAS 167 amends certain requirements of FASB Interpretation No. 46 (revised December 2003), Consolidation of Variable Interest Entities, to improve financial reporting by enterprises involved with variable interest entities and to provide more relevant and reliable information to users of financial statements. This Statement is effective as of the beginning of each reporting entity's first annual reporting period that begins after November 15, 2009, for interim periods within that first annual reporting period, and for interim and annual reporting periods thereafter. Earlier application is prohibited. The Company is currently assessing the impact of the adoption of SFAS 167.

In August 2009, the FASB issued Accounting Standards Update (ASU) No. 2009-05, "Fair Value Measurements and Disclosures" (Topic 820) (ASU 2009-05). ASU 2009-05 provided amendments to ASC 820-10, "Fair Value Measurements and Disclosures — Overall," for the fair value measurement of liabilities. ASU 2009-05 provides clarification that in circumstances in which a quoted price in an active market for the identical liability is not available, a reporting entity is required to measure fair value using certain techniques. ASU 2009-05 also clarifies that when estimating the fair value of a liability, a reporting entity is not required to include a separate input or adjustment to other inputs relating to the existence of a restriction that prevents the transfer of a liability. ASU 2009-05 also clarifies that both a quoted price in an active market for the identical liability at the measurement date and the quoted price for the identical liability when traded as an asset in an active market when no adjustments to the quoted price of the asset are required are Level 1 fair value measurements. The new guidance is effective for interim and annual periods beginning after August 27, 2009, and applies to all fair-value measurements of liabilities required by GAAP. The Company is currently assessing the impact of the adoption of ASU 2009-05.

In October 2009, the FASB issued ASU 2009-13, "Multiple-Deliverable Revenue Arrangements," (amendments to FASB ASC Topic 605, Revenue Recognition) (ASU 2009-13). ASU 2009-13 requires entities to allocate revenue in an arrangement using estimated selling prices of the delivered goods and services based on a selling price hierarchy. The amendments eliminate the residual method of revenue allocation and require revenue to be allocated using the relative selling price method. ASU 2009-13 should be applied on a prospective basis for revenue arrangements entered into or materially modified in fiscal years beginning on or after June 15, 2010, with early adoption permitted. The Company is currently assessing the impact of the adoption of ASU 2009-13.

ITEM 3.

Quantitative and Qualitative Disclosures about Market Risk

Our exposure to market risk is confined to our cash, cash equivalents, and short-term investments. We invest in high-quality financial instruments, primarily money market funds, with the average effective duration of the portfolio within one year which we believe are subject to limited credit risk. We currently do not hedge interest rate exposure. Due to the short-term nature of our investments, we do not believe that we have any material exposure to interest rate risk arising from our investments. The Company is exposed to credit risks in the event of default by the financial institutions or issuers of investments in excess of FDIC insured limits. The Company performs periodic evaluations of the relative credit standing of these financial institutions and limits the amount of credit exposure with any institution.

ITEM 4.

Controls and Procedures

Evaluation of disclosure controls and procedures

Based on their evaluation as of September 30, 2009, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures as defined in Rules 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934, as amended, were effective to ensure that the information required to be disclosed by us in this Quarterly Report on Form 10-Q was recorded, processed, summarized and reported within the time periods specified in the SEC's rules and Form 10-Q, and that such information was accumulated and communicated to management, including the Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

Change in internal control over financial reporting

There were no changes in our internal control over financial reporting during the quarter ended September 30, 2009 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Limitations on the effectiveness of controls

Our disclosure controls and procedures are designed to provide reasonable, not absolute, assurance that the objectives of our disclosure control system are met. Because of inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues, if any, within a company have been detected.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

Not Applicable.

Item 1A. Risk Factors

Our business and operations entail a variety of serious risks and uncertainties, including those described in Item 1A of our Form 10-K for the year ended December 31, 2008. In addition, the following risk factors have materially changed during the nine months ended September 30, 2009:

We have incurred losses for a number of years, and anticipate that we will incur continued losses for the foreseeable future.

We began operations in December 1989. At that time, we provided research services, mostly to US government agencies, on classified projects. We have financed our operations since 1999 primarily through the sale of our equity securities and have devoted substantially all of our resources to research and development relating to MelaFind®. Our net loss for the three and nine months ended September 30, 2009 was approximately \$5 million and \$12.9 million, respectively, and as of September 30, 2009, we had an accumulated deficit of approximately \$73.6 million. Our research and development expenses may increase in connection with our clinical trials and other development activities related to MelaFind®. If we receive PMA approval for MelaFind® from the FDA, we expect to incur significant sales and marketing expenses, which will require additional funding, and manufacturing expenses. As a result, we expect to continue to incur significant and increasing operating losses for the foreseeable future. These losses, among other things, have had and will continue to have an adverse effect on our stockholders' equity.

[Table of Contents](#)

We may be unable to complete the development and commence commercialization of MelaFind[®] or other products without additional funding, and we will not be able to achieve significant commercialization without additional funding.

As of September 30, 2009, we had \$24.8 million in cash and cash equivalents. Our operations have consumed substantial amounts of cash for each of the last eight years. The Company will require additional funds to pursue regulatory approvals and to achieve significant commercialization of MelaFind[®]. There can be no assurances that the Company will be able to raise financing as needed from time to time, whether under the CEFF or by other types of securities offerings.

Additional funds may not become available on acceptable terms, and there can be no assurance that any additional funding that the Company does obtain will be sufficient to meet the Company's needs in the long term. Any additional financing may be dilutive to stockholders, or may require us to grant a lender a security interest in our assets. The amount of funding we will need will depend on many factors, including:

- the schedule, costs, and results of our clinical trials;
- the success of our research and development efforts;
- the costs and timing of regulatory approval;
- reimbursement amounts for the use of MelaFind[®] that we are able to obtain from Medicare and third-party payers, or the amount of direct payments we are able to obtain from patients and/or physicians utilizing MelaFind[®];
- the cost of commercialization activities, including product marketing and building a domestic direct sales force;
- the emergence of competing or complementary technological developments;
- the costs of filing, prosecuting, defending and enforcing any patent claims and other rights, including litigation costs and the results of such litigation;
- the costs involved in defending any patent infringement actions brought against us by third parties; and
- our ability to establish and maintain any collaborative, licensing or other arrangements, and the terms and timing of any such arrangements.

If we are unable to obtain adequate financing on a timely basis, we may be required to significantly curtail or cease one or more of our development and marketing programs. We could be required to seek funds through arrangements with collaborators or others that may require us to relinquish rights to some of our technologies, product candidates or products that we would otherwise pursue on our own. We also may have to reduce marketing, customer support and other resources devoted to our products. If we raise additional funds by issuing equity securities, our then-existing stockholders will experience ownership dilution, could experience declines in our share price and the terms of any new equity securities may have preferences over our common stock.

Our stock price is likely to be volatile, meaning purchasers of our common stock could incur substantial losses.

Our stock price is likely to be volatile. Between October 28, 2005 (the date of our initial public offering) and September 30, 2009, our stock price has ranged from \$2.29 to \$10.95 per share. The stock market in general and the market for medical technology companies in particular have experienced extreme volatility that has often been unrelated to the operating performance of particular companies. The following factors, in addition to other risk factors described in this section and general market and economic conditions, may have a significant impact on the market price of our common stock:

- results of our research and development efforts and our clinical trials;
- the timing of regulatory approval for our products;
- failure of any of our products, if approved, to achieve commercial success;
- the announcement of new products or product enhancements by us or our competitors;
- regulatory developments in the US and foreign countries;
- ability to manufacture our products to commercial standards;
- developments concerning our clinical collaborators, suppliers or marketing partners;
- changes in financial estimates or recommendations by securities analysts;
- public concern over our products;
- developments or disputes concerning patents or other intellectual property rights;
- product liability claims and litigation against us or our competitors;
- the departure of key personnel;
- the strength of our balance sheet;
- variations in our financial results or those of companies that are perceived to be similar to us;
- changes in the structure of and third-party reimbursement in the US and other countries;
- changes in accounting principles or practices;
- general economic, industry and market conditions; and
- future sales of our common stock.

A decline in the market price of our common stock could cause you to lose some or all of your investment and may adversely impact our ability to attract and retain employees and raise capital. In addition, stockholders may initiate securities class action lawsuits if the market price of our stock drops significantly. Whether or not meritorious, litigation brought against us could result in substantial costs and could divert the time and attention of our management. Our insurance to cover claims of this sort, if brought, may not be adequate, or in certain circumstances, not provide coverage.

Results could be impacted by the effects of, and changes in, world-wide economic and capital market conditions

The Company's business may be adversely affected by factors in the United States and other countries that are beyond its control, such as disruptions in the financial markets or downturns in economic activity. The current world-wide economic conditions could have an adverse impact on the availability and cost of capital, interest rates, tax rates, or regulations.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

On May 7, 2009, the Company entered into a Committed Equity Financing Facility arrangement, or CEFF, with Kingsbridge Capital Limited (Kingsbridge) in which Kingsbridge has committed to purchase, subject to certain conditions and at the Company's sole discretion, up to the lesser of \$45 million or 3,327,000 shares of common stock, through May 7, 2012.

Under the CEFF, during August and September of 2009, the Company sold 862,201 shares of common stock to Kingsbridge Capital Limited, at an average per share price of approximately \$9.25, for gross proceeds of \$7.977 million.

Subsequent to September 30, 2009 and through November 5, 2009, also under the CEFF, the Company sold 962,740 shares of common stock to Kingsbridge Capital Limited, at an average per share price of approximately \$9.23, for gross proceeds of \$8.886 million. These shares were issued in reliance upon the exemption from registration provided by Section 4(2) of the Securities Act of 1933, as amended, for transactions by an issuer not involving a public offering.

Item 3. Defaults Upon Senior Securities.

Not applicable.

Item 4. Submission of Matters to a Vote of Security Holders.

Not applicable.

Item 5. Other Information

- (a) Not applicable
- (b) Not applicable

[Table of Contents](#)

Item 6. Exhibits

Exhibit Number	Exhibit Title
31.1#	Certification of Chief Executive Officer Pursuant to Rule 13a-14(a) or Rule 15d-14(a) under the Securities Exchange Act of 1934, as amended.
31.2#	Certification of Chief Financial Officer Pursuant to Rule 13a-14(a) or Rule 15d-14(a) under the Securities Exchange Act of 1934, as amended.
32.1#	Certification of Chief Executive Officer and Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

Filed herewith

SIGNATURES

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

ELECTRO-OPTICAL SCIENCES, INC.

By: /s/ Richard I. Steinhart
Richard I. Steinhart
Vice President and Chief Financial Officer
(Principal Accounting and Financial Officer)

Date: November 9, 2009

EXHIBIT INDEX

Exhibit No.	Description
31.1	Certification by the Chief Executive Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) under the Securities Exchange Act of 1934, as amended.
31.2	Certification by the Chief Financial Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) under the Securities Exchange Act of 1934, as amended.
32.1	Certification Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

**CERTIFICATION BY THE CHIEF EXECUTIVE OFFICER PURSUANT TO RULE 13A-14(A) or
RULE 15D-14(A) UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED**

I, Joseph V. Gulfo, certify that:

1. I have reviewed this report on Form 10-Q of Electro-Optical Sciences, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of the financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's Board of Directors (or persons performing the equivalent functions):
 - a) all significant deficiencies and material weaknesses in the design or operations of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) any fraud whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 9, 2009

/s/ Joseph V. Gulfo, M.D.
Joseph V. Gulfo, M.D.
President and Chief Executive Officer
(Principal Executive Officer)

**CERTIFICATION BY THE CHIEF FINANCIAL OFFICER PURSUANT TO RULE 13A-14(A) or
RULE 15D-14(A) UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED**

I, Richard I. Steinhart, certify that:

1. I have reviewed this report on Form 10-Q of Electro-Optical Sciences, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of the financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's Board of Directors (or persons performing the equivalent functions):
 - a) all significant deficiencies and material weaknesses in the design or operations of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) any fraud whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 9, 2009

/s/ Richard I. Steinhart

Richard I. Steinhart

Vice President and Chief Financial Officer

(Principal Accounting and Financial Officer)

**ELECTRO-OPTICAL SCIENCES, INC.
CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

Each of the undersigned officers of Electro-Optical Sciences, Inc. (the "Company") hereby certifies to his knowledge that the Company's quarterly report on Form 10-Q for the period ended September 30, 2009 (the "Report"), as filed with the Securities and Exchange Commission on the date hereof, fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended, and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Joseph V. Gulfo
Joseph V. Gulfo
President and Chief Executive Officer
(Principal Executive Officer)
November 9, 2009

/s/ Richard I. Steinhart
Richard I. Steinhart
Vice President & Chief Financial Officer
(Principal Accounting and Financial Officer)
November 9, 2009

* A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to Electro-Optical Sciences, Inc. and will be retained by Electro-Optical Sciences, Inc. and furnished to the Securities and Exchange Commission or its staff upon request. This written statement accompanies the Form 10-Q to which it relates, is not deemed filed with the Securities and Exchange Commission, and will not be incorporated by reference into any filing of Electro-Optical Sciences, Inc. under the Securities Act of 1933 or the Securities Exchange Act of 1934, irrespective of any general incorporation language contained in such filing.