

AWARE INC /MA/
Form 10-Q
May 06, 2009

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 quarter ended March 31, 2009

Commission file number 000-21129

AWARE, INC.
(Exact Name of Registrant as Specified in Its Charter)

Massachusetts
(State or Other Jurisdiction of
Incorporation or Organization)

04-2911026
(I.R.S. Employer Identification No.)

40 Middlesex Turnpike, Bedford, Massachusetts, 01730
(Address of Principal Executive Offices)
(Zip Code)

(781) 276-4000
(Registrant's Telephone Number, Including Area Code)

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definition of "large accelerated filer", "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

o

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

Indicate the number of shares outstanding of the issuer's common stock as of May 1, 2009:

Class	Number of Shares Outstanding
Common Stock, par value \$0.01 per share	19,780,952 shares

AWARE, INC.

FORM 10-Q
FOR THE QUARTER ENDED MARCH 31, 2009

TABLE OF CONTENTS

	Page
PART I FINANCIAL INFORMATION	
Item 1. Unaudited Consolidated Financial Statements	
Consolidated Balance Sheets as of March 31, 2009 and December 31, 2008	3
Consolidated Statements of Operations for the Three Months Ended March 31, 2009 and March 31, 2008	4
Consolidated Statements of Cash Flows for the Three Months Ended March 31, 2009 and March 31, 2008	5
Notes to Consolidated Financial Statements	6
Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations	11
Item 3. Quantitative and Qualitative Disclosures about Market Risk	15
Item 4. Controls and Procedures	15
PART II OTHER INFORMATION	
Item 1. Legal Proceedings	16
Item 1A. Risk Factors	16
Item 2. Unregistered Sales of Equity Securities and Use of Proceeds	28
Item 6. Exhibits	29
Signatures	29

PART I. FINANCIAL INFORMATION
ITEM 1: CONSOLIDATED FINANCIAL STATEMENTS
AWARE, INC.
CONSOLIDATED BALANCE SHEETS
(in thousands, except share data)
(unaudited)

	March 31, 2009	December 31, 2008
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 42,513	\$ 45,516
Accounts receivable, net	3,426	2,211
Inventories	1,558	1,656
Prepaid expenses and other current assets	892	598
Total current assets	48,389	49,981
Property and equipment, net	7,327	7,463
Other assets, net	85	102
Total assets	\$ 55,801	\$ 57,546
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 659	\$ 466
Accrued expenses	282	241
Accrued compensation	1,287	1,480
Accrued professional	163	167
Deferred revenue	297	339
Total current liabilities	2,688	2,693
Long-term deferred revenue	330	330
Stockholders' equity:		
Preferred stock, \$1.00 par value; 1,000,000 shares authorized, none outstanding	-	-
Common stock, \$.01 par value; 70,000,000 shares authorized; issued and outstanding, 23,281,204 as of March 31, 2009 and 23,281,204 as of December 31, 2008	233	233
Additional paid-in capital	83,534	83,143
Accumulated deficit	(30,984)	(28,853)
Total stockholders' equity	52,783	54,523
Total liabilities and stockholders' equity	\$ 55,801	\$ 57,546

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

AWARE, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except per share data)
(unaudited)

	Three Months Ended March 31,	
	2009	2008
Revenue:		
Product sales	\$ 2,819	\$ 3,924
Contract revenue	1,277	1,521
Royalties	477	431
Total revenue	4,573	5,876
Costs and expenses:		
Cost of product sales	513	824
Cost of contract revenue	908	1,018
Research and development	3,111	3,528
Selling and marketing	1,081	969
General and administrative	1,213	1,193
Total costs and expenses	6,826	7,532
Loss from operations	(2,253)	(1,656)
Interest income	125	383
Loss before provision for income taxes	(2,128)	(1,273)
Provision for income taxes	3	9
Net loss	\$ (2,131)	\$ (1,282)
Net loss per share – basic	\$ (0.09)	\$ (0.05)
Net loss per share – diluted	\$ (0.09)	\$ (0.05)
Weighted average shares – basic	23,281	23,880
Weighted average shares – diluted	23,281	23,880

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

AWARE, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)
(unaudited)

	Three Months Ended March 31,	
	2009	2008
Cash flows from operating activities:		
Net loss	\$ (2,131)	\$ (1,282)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:		
Depreciation and amortization	227	224
Stock based compensation	391	325
Provision for doubtful accounts	-	(15)
Increase (decrease) from changes in assets and liabilities:		
Accounts receivable	(1,215)	2,633
Inventories	98	(89)
Prepaid expenses	(294)	10
Accounts payable	193	(67)
Accrued expenses	(156)	227
Deferred revenue	(42)	(154)
Net cash provided by (used in) operating activities	(2,929)	1,812
Cash flows from investing activities:		
Purchases of property and equipment	(74)	(215)
Sales of investments	-	25,470
Purchases of investments	-	(2,000)
Net cash provided by (used in) investing activities	(74)	23,255
Cash flows from financing activities:		
Proceeds from issuance of common stock	-	158
Net cash provided by financing activities	-	158
Increase (decrease) in cash and cash equivalents	(3,003)	25,225
Cash and cash equivalents, beginning of period	45,516	1,806
Cash and cash equivalents, end of period	\$ 42,513	\$ 27,031

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

AWARE, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(unaudited)

A) Basis of Presentation

The accompanying unaudited consolidated balance sheet, statements of operations, and statements of cash flows reflect all adjustments (consisting only of normal recurring items) which are, in the opinion of management, necessary for a fair presentation of financial position at March 31, 2009, and of operations and cash flows for the interim periods ended March 31, 2009 and 2008. Certain reclassifications have been made to the prior year financial statements to conform to the current year presentation.

The accompanying unaudited consolidated financial statements have been prepared in accordance with the instructions for Form 10-Q and therefore do not include all information and footnotes necessary for a complete presentation of our financial position, results of operations and cash flows, in conformity with generally accepted accounting principles. We filed audited financial statements which included all information and footnotes necessary for such presentation for the three years ended December 31, 2008 in conjunction with our 2008 Annual Report on Form 10-K.

The results of operations for the interim period ended March 31, 2009 are not necessarily indicative of the results to be expected for the year.

B) Fair Value Measurements

In September 2006, the FASB issued SFAS No. 157 ("SFAS 157"), "Fair Value Measurements". SFAS 157 defines fair value, establishes a framework for measuring fair value in accordance with accounting principles generally accepted in the United States, and expands disclosures about fair value measurements. We adopted the provisions of SFAS 157 as of January 1, 2008, for our financial instruments. Although the adoption of SFAS 157 did not materially impact our financial condition, results of operations, or cash flow, we are now required to provide additional disclosures as part of our financial statements.

SFAS 157 establishes a three-tier fair value hierarchy, which prioritizes the inputs used in measuring fair value. These tiers include: Level 1, defined as observable inputs such as quoted prices in active markets; Level 2, defined as inputs other than quoted prices in active markets that are either directly or indirectly observable; and Level 3, defined as unobservable inputs in which little or no market data exists, therefore requiring an entity to develop its own assumptions.

For recognition purposes, on a recurring basis we are required to measure available for sale investments at fair value. We had no available for sale investments as of March 31, 2009 or December 31, 2008.

Our cash and cash equivalents, including money market securities, were \$42.5 million and \$45.5 million as of March 31, 2009 and December 31, 2008, respectively. We classified our cash and cash equivalents within Level 1 of the fair value hierarchy because they are valued using quoted market prices.

C) Inventory

Inventories are stated at the lower of cost or net realizable value with cost being determined by the first-in, first-out (“FIFO”) method. Inventory reserves are established for estimated excess and obsolete inventory. Inventory consists primarily of the following (in thousands):

	March 31, 2009	December 31, 2008
Raw materials	\$ 1,553	\$ 1,650
Finished goods	5	6
Total	\$ 1,558	\$ 1,656

D) Computation of Earnings per Share

Basic earnings per share is computed by dividing net income or loss by the weighted average number of common shares outstanding. Diluted earnings per share is computed by dividing net income or loss by the weighted average number of common shares outstanding plus additional common shares that would have been outstanding if dilutive potential common shares had been issued. For the purposes of this calculation, stock options are considered common stock equivalents in periods in which they have a dilutive effect. Stock options that are anti-dilutive are excluded from the calculation.

Net loss per share is calculated as follows (in thousands, except per share data):

	Three Months Ended March 31,	
	2009	2008
Net loss	\$ (2,131)	\$ (1,282)
Weighted average common shares outstanding	23,281	23,880
Additional dilutive common stock equivalents	-	-
Diluted shares outstanding	23,281	23,880
Net loss per share – basic	\$ (0.09)	\$ (0.05)
Net loss per share – diluted	\$ (0.09)	\$ (0.05)

For the three month periods ended March 31, 2009 and 2008 potential common stock equivalents of 195 and 646,887, respectively, were not included in the per share calculation for diluted EPS, because we had a net loss and the effect of their inclusion would be anti-dilutive. For the three month periods ended March 31, 2009 and 2008, options to purchase 7,499,993 and 3,471,768 shares of common stock, respectively, were outstanding, but were not included in the computation of diluted EPS because the options’ exercise prices were greater than the average market price of the common stock and thus would be anti-dilutive.

E) Stock-Based Compensation

The following table presents stock-based employee compensation expenses included in the Company's unaudited consolidated statements of operations (in thousands):

	Three Months Ended March 31, 2009	Three Months Ended March 31, 2008
Cost of product sales	\$ 3	\$ 3
Cost of contract revenue	32	34
Research and development	146	167
Selling and marketing	52	31
General and administrative	158	90
Stock-based compensation expense	\$ 391	\$ 325

The Company estimates the fair value of stock options using the Black-Scholes valuation model. This valuation model takes into account the exercise price of the award, as well as a variety of significant assumptions. These assumptions used to estimate the fair value of stock options include the expected term, the expected volatility of the Company's stock over the expected term, the risk-free interest rate over the expected term, and the Company's expected annual dividend yield. The Company believes that the valuation technique and the approach utilized to develop the underlying assumptions are appropriate in calculating the fair values of the Company's stock options granted in the three months ended March 31, 2009 and March 31, 2008. Estimates of fair value are not intended to predict actual future events or the value ultimately realized by persons who receive equity awards.

F) Business Segments

The Company organizes itself as one segment and conducts its operations in the United States.

The Company sells its products and technology to domestic and international customers. Revenues were generated from the following geographic regions (in thousands):

	Three Months Ended March 31,	
	2009	2008
United States	\$ 2,525	\$ 4,001
Germany	1,034	1,514
Rest of World	1,014	361
	\$ 4,573	\$ 5,876

G) Income Taxes

As of December 31, 2008, we had federal net operating loss and research and experimentation credit carryforwards of approximately \$46.5 million and \$12.8 million respectively, which may be available to offset future federal income tax liabilities and expire at various dates from 2009 through 2029. In addition, at December 31, 2008, we had approximately \$11.4 million and \$6.6 million of state net operating losses and state research and development and investment tax carryforwards, respectively, which expire at various dates from 2009 through 2023.

Based on an analysis that we performed under Internal Revenue Code Section 382 on our NOLs generated for the period 1997 through 2007, we have not experienced a change in ownership as defined by Section 382, and, therefore, the NOLs are not currently under any Section 382 limitation.

H) Recent Accounting Pronouncements

In September 2006, the FASB issued SFAS No. 157 ("SFAS 157"), "Fair Value Measurements," which defines fair value, establishes guidelines for measuring fair value and expands disclosures regarding fair value measurements. SFAS 157 does not require any new fair value measurements but rather eliminates inconsistencies in guidance found in various prior accounting pronouncements. SFAS 157 is effective for fiscal years beginning after November 15, 2007. However, on February 6, 2008, the FASB issued FSP FAS 157-b which defers the effective date of SFAS 157 for one year for nonfinancial assets and nonfinancial liabilities that are recognized or disclosed at fair value in the financial statements on a recurring basis. We adopted SFAS 157 on January 1, 2008, except as it applies to those nonfinancial assets and nonfinancial liabilities as noted in FSP FAS 157-b. We adopted FSP FAS 157-b on January 1, 2009. The adoption of SFAS 157 did not have a material impact on our consolidated financial position, results of operations or cash flows.

In December 2007, the Financial Accounting Standards Board issued Statement of Financial Accounting Standard ("SFAS") No. 160, "Noncontrolling Interests in Consolidated Financial Statements, an amendment of ARB No. 51." SFAS 160 establishes accounting and reporting standards for the noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. This accounting standard is effective for fiscal years beginning after December 15, 2008. We adopted SFAS 160 on January 1, 2009. The adoption of SFAS 160 did not have a material impact on our consolidated financial position, results of operations or cash flows.

In December 2007, the Financial Accounting Standards Board issued Statement of Financial Accounting Standard ("SFAS") No. 141(R), "Business Combinations." SFAS 141(R) establishes principles and requirements for how the acquirer recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed, an any noncontrolling interest in the acquiree, recognizes and measures the goodwill acquired in the business combination or a gain from a bargain purchase, and determines what information to disclose to enable users of the financial statements to evaluate the nature and financial effects of the business combination. This accounting standard is effective for fiscal years beginning after December 15, 2008. We adopted SFAS 141(R) on January 1, 2009. The adoption of SFAS 141(R) did not have a material impact on our consolidated financial position, results of operations or cash flows as of the date of adoption. SFAS 141(R) will be applied to any future business combinations.

I) Share Repurchase Program

On August 28, 2007, we announced a stock repurchase program to purchase up to \$5.0 million of our common stock, subject to market conditions and other factors. Any purchases under our stock repurchase program may be made from time to time without prior notice. On October 29, 2008, we announced that the program had been amended to increase the total amount of common stock that may be repurchased from \$5.0 million to \$10.0 million and to extend the period of time that shares may be repurchased from December 31, 2008 to December 31, 2009. As of March 31, 2009, we had repurchased 721,131 shares of common stock at a total cost of \$2.4 million under this program. We did not repurchase any shares during the three months ended March 31, 2009 or 2008.

On March 5, 2009, we announced a modified Dutch auction self-tender offer to purchase up to 3,500,000 shares, or approximately 15%, of our outstanding common stock (including the associated preferred share purchase rights), at a price in the range of \$2.20 to \$2.60 per share, for a maximum aggregate purchase price of approximately \$9.1 million. The terms of the tender offer also provided the right for us to purchase up to an additional 2% of our shares if the offer was oversubscribed.

The tender offer closed on April 17, 2009, and on April 23, 2009 we repurchased 3,500,252 shares at \$2.50 per share for a total cost of \$8.8 million, excluding expenses.

ITEM 2:
Management's Discussion and Analysis of
Financial Condition and Results of Operations

Cautionary Statement for Purposes of the "Safe Harbor" Provisions of the Private Securities Litigation Reform Act of 1995

Some of the information in this Form 10-Q contains forward-looking statements that involve substantial risks and uncertainties. You can identify these statements by forward-looking words such as "may," "will," "expect," "anticipate," "believe," "estimate," "continue" and similar words. You should read statements that contain these words carefully because they: (1) discuss our future expectations; (2) contain projections of our future operating results or financial condition; or (3) state other "forward-looking" information. However, we may not be able to predict future events accurately. The risk factors listed in this Form 10-Q, as well as any cautionary language in this Form 10-Q, provide examples of risks, uncertainties and events that may cause our actual results to differ materially from the expectations we describe in our forward-looking statements. You should be aware that the occurrence of any of the events described in these risk factors and elsewhere in this Form 10-Q could materially and adversely affect our business.

Results of Operations

Product Sales. Product sales consist primarily of revenue from the sale of hardware and software products. Hardware products consist of DSL test and diagnostics hardware, including systems, modules, and modems. Software products consist of software products for biometric, medical imaging and digital imaging applications, as well as DSL test and diagnostics software.

Product sales decreased 28% from \$3.9 million in the first quarter of 2008 to \$2.8 million in the current year quarter. As a percentage of total revenue, product sales decreased from 67% in the first quarter of 2008 to 62% in the current year quarter. The dollar decrease was primarily due to lower sales of biometric software and test and diagnostics hardware, which was partially offset by increased sales of test and diagnostics software.

Contract Revenue. Contract revenue consists of patent, license and engineering service fees that we receive under agreements relating to the sale or license of Aware's patents, DSL technology, DSL test and diagnostics technology, and biometrics technology.

Contract revenue decreased 16% from \$1.5 million in the first quarter of 2008 to \$1.3 million in the current year quarter. As a percentage of total revenue, contract revenue increased from 26% in the first quarter of 2008 to 28% in the current year quarter. The dollar decrease was primarily due to lower contract revenue from biometrics technology contracts, which was partially offset by a slight increase in contract revenue from DSL technology contracts. Revenue from biometrics technology contracts was lower in the current year quarter primarily because revenue from a large project that commenced in late 2007 was lower in the current quarter.

Although revenue from DSL technology contracts was slightly higher in the current year quarter, the environment for licensing DSL technology over the last few years has been characterized by uncertainty in the semiconductor and telecommunications industries generally, and intense competition and falling prices for DSL chipsets specifically. During the last several years, we have seen customers and potential customers cautiously evaluate new chipset projects or delay or cancel projects in the face of such conditions. Moreover, in the recent past, three of our licensees decided to exit the DSL chipset business altogether. As a result of these conditions and customer actions, we expect that our ability to grow or maintain revenue from these activities in the future will be challenging.

Royalties. Royalties consist of royalty payments that we receive under agreements with our customers. We receive royalties from customers for rights to Aware technology and/or patents, typically associated with the incorporation of Aware technology and/or patents in customer chipsets or solutions.

Royalties increased 11% from \$0.4 million in the first quarter of 2008 to \$0.5 million in the current year quarter. As a percentage of total revenue, royalties increased from 7% in the first quarter of 2008 to 10% in the current year quarter. The dollar increase in royalties was due to a \$0.1 million increase in ADSL royalties.

Our royalty revenue comes predominantly from ADSL chipset sales by Ikanos Communications, Inc. (“Ikanos”) and ADSL and VDSL chipset sales by Infineon Technologies AG (“Infineon”). Despite steady growth of worldwide DSL subscribers over the last several years, the availability of DSL chipsets from a number of suppliers has caused intense competition among those suppliers. We are uncertain as to whether our licensees will be able to maintain their market shares and chipset prices in the face of such competition, and whether our relationships with them will contribute meaningful royalties to us in the future.

Cost of Product Sales. Since the cost of software product sales is minimal, cost of product sales consists primarily of the cost of hardware product sales. Cost of product sales decreased 38% from \$824,000 in the first quarter of 2008 to \$513,000 in the current year quarter. As a percentage of product sales, cost of product sales decreased from 21% in the first quarter of 2008 to 18% in the current year quarter, which means that product gross margins increased from 79% to 82%. The cost of product sales dollar decrease was primarily due to lower sales of test and diagnostics hardware. The increase in product gross margins was primarily due to a greater proportion of software sales in product sales in the current quarter versus the year ago quarter.

Cost of Contract Revenue. Cost of contract revenue consists primarily of compensation costs for engineers and expenses for consultants, technology licensing fees, recruiting, supplies, equipment, depreciation and facilities associated with customer development projects. Our total engineering costs are allocated between cost of contract revenue and research and development expense. In a given period, the allocation of engineering costs between cost of contract revenue and research and development is a function of the level of effort expended on each.

Cost of contract revenue decreased 11% from \$1.0 million in the first quarter of 2008 to \$0.9 million in the current year quarter. Cost of contract revenue as a percentage of contract revenue, was 67% in the first quarter of 2008 and 71% in the current quarter, which means that the gross margins on contract revenue decreased from 33% to 29%. The dollar decrease in cost of contract revenue was primarily a function of lower biometrics contract revenue in the current quarter, which decreased the amount we charged to cost of contract revenue. Lower cost of contract revenue from biometrics contracts was partially offset by increased cost of contract revenue from DSL contracts.

Research and Development Expense. Research and development expense consists primarily of compensation costs for engineers and expenses for consultants, recruiting, supplies, equipment, depreciation and facilities related to engineering projects to improve our broadband intellectual property offerings, as well as our software and hardware product technology.

Research and development expenses decreased 12% from \$3.5 million in the first quarter of 2008 to \$3.1 million in the current year quarter. As a percentage of total revenue, research and development expense increased from 60% in the first quarter of 2008 to 68% in the current year quarter. The dollar decrease in research and development expense was primarily due to: 1) headcount attrition in our engineering organization over the past year and lower spending on design and other outside services; and 2) a slight shift of engineering resources from internal development projects (i.e., research and development expense) to DSL customer contracts (i.e., cost of contract revenue).

Our research and development spending was principally focused on developing analog and digital silicon IP solutions for broadband communications applications, developing test and diagnostics hardware and software, and developing biometrics and imaging software.

Selling and Marketing Expense. Selling and marketing expense consists primarily of compensation costs for sales and marketing personnel, travel, advertising and promotion, recruiting, and facilities expense. Sales and marketing expense increased 12% from \$1.0 million in the first quarter of 2008 to \$1.1 million in the current year quarter. As a percentage of total revenue, sales and marketing expense increased from 16% in the first quarter of 2008 to 24% in the current year quarter. The dollar increase was mainly attributable to headcount growth in our biometrics sales organization, which was partially offset by lower sales commissions.

General and Administrative Expense. General and administrative expense consists primarily of compensation costs for administrative personnel, facility costs, bad debt, audit, legal, stock exchange and insurance expenses. General and administrative expenses increased 2% from slightly less than \$1.2 million in the first quarter of 2008 to slightly more than \$1.2 million in the current year quarter. As a percentage of total revenue, general and administrative expense increased from 20% in the first quarter of 2008 to 27% in the current year quarter. The slight dollar increase was mainly attributable to higher stock-based compensation expenses, which were partially offset by lower legal fees.

Interest Income. Interest income decreased 67% from \$383,000 in the first quarter of 2008 to \$125,000 in the current year quarter. The dollar decrease was primarily due to a significant decline in money market interest rates.

Income Taxes. We made no provision for income taxes in the first three months of 2009 and 2008 due to net losses incurred and the uncertainty of the timing of profitability in future periods, except for \$3,000 and \$9,000 of state excise tax paid in the first quarter of 2009 and 2008, respectively. In 2002, we determined that due to our continuing operating losses as well as the uncertainty of the timing of profitability in future periods, we should fully reserve our deferred tax assets. As of March 31, 2009, our deferred tax assets continue to be fully reserved. We will continue to evaluate, on a quarterly basis, the positive and negative evidence affecting the realizability of our deferred tax assets.

As of December 31, 2008, we had federal net operating loss and research and experimentation credit carryforwards of approximately \$46.5 million and \$12.8 million respectively, which may be available to offset future federal income tax liabilities and expire at various dates from 2009 through 2029. In addition, at December 31, 2008, we had approximately \$11.4 million and \$6.6 million of state net operating losses and state research and development and investment tax carryforwards, respectively, which expire at various dates from 2009 through 2023.

Based on an analysis that we performed under Internal Revenue Code Section 382 on our NOLs generated for the period 1997 through 2007, we have not experienced a change in ownership as defined by Section 382, and, therefore, the NOLs are not currently under any Section 382 limitation.

Liquidity and Capital Resources

At March 31, 2009, we had cash and cash equivalents of \$42.5 million, which represents a decrease of \$3.0 million from December 31, 2008. The decrease in cash was primarily due to cash used by operations of \$2.9 million and \$0.1 million of capital spending on equipment.

Cash used by operations in the first three months of 2009 was primarily due to a net loss of \$2.1 million, adjusted for non-cash items related to depreciation and amortization of \$0.2 million, and stock based compensation expense of \$0.4 million. We also used \$1.4 million of cash to fund working capital items in the first three months of 2009. Capital spending was primarily related to the purchase of computer hardware, and laboratory equipment used principally in engineering activities.

On March 5, 2009, we announced a modified Dutch auction self-tender offer to purchase up to 3,500,000 shares of our common stock. The tender offer closed on April 17, 2009, and on April 23, 2009 we repurchased 3,500,252 shares at \$2.50 per share for a total cost of \$8.8 million, excluding expenses.

While we can not assure you that we will not require additional financing, or that such financing will be available to us, we believe that our cash and cash equivalents will be sufficient to fund our operations for at least the next twelve months.

Recent Accounting Pronouncements

In September 2006, the FASB issued SFAS No. 157 ("SFAS 157"), "Fair Value Measurements," which defines fair value, establishes guidelines for measuring fair value and expands disclosures regarding fair value measurements. SFAS 157 does not require any new fair value measurements but rather eliminates inconsistencies in guidance found in various prior accounting pronouncements. SFAS 157 is effective for fiscal years beginning after November 15, 2007. However, on February 6, 2008, the FASB issued FSP FAS 157-b which defers the effective date of SFAS 157 for one year for nonfinancial assets and nonfinancial liabilities that are recognized or disclosed at fair value in the financial statements on a recurring basis. We adopted SFAS 157 on January 1, 2008, except as it applies to those nonfinancial assets and nonfinancial liabilities as noted in FSP FAS 157-b. We adopted FSP FAS 157-b on January 1, 2009. The adoption of SFAS 157 did not have a material impact on our consolidated financial position, results of operations or cash flows.

In December 2007, the Financial Accounting Standards Board issued Statement of Financial Accounting Standard ("SFAS") No. 160, "Noncontrolling Interests in Consolidated Financial Statements, an amendment of ARB No. 51." SFAS 160 establishes accounting and reporting standards for the noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. This accounting standard is effective for fiscal years beginning after December 15, 2008. We adopted SFAS 160 on January 1, 2009. The adoption of SFAS 160 did not have a material impact on our consolidated financial position, results of operations or cash flows.

In December 2007, the Financial Accounting Standards Board issued Statement of Financial Accounting Standard ("SFAS") No. 141(R), "Business Combinations." SFAS 141(R) establishes principles and requirements for how the acquirer recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed, an any noncontrolling interest in the acquiree, recognizes and measures the goodwill acquired in the business combination or a gain from a bargain purchase, and determines what information to disclose to enable users of the financial statements to evaluate the nature and financial effects of the business combination. This accounting standard is effective for fiscal years beginning after December 15, 2008. We adopted SFAS 141(R) on January 1, 2009. The adoption of SFAS 141(R) did not have a material impact on our consolidated financial position, results of operations or cash flows as of the date of adoption. SFAS 141(R) will be applied to any future business combinations.

ITEM 3:
Quantitative and Qualitative Disclosures about Market Risk

Our exposure to market risk relates primarily to our investment portfolio, and the effect that changes in interest rates would have on that portfolio. Our investment portfolio has included:

- Cash and cash equivalents, which consist of financial instruments with original maturities of three months or less;
- Short-term investments, which consist of financial instruments with remaining maturities of twelve months or less; and
- Investments, which consist of financial instruments that mature in three years or less.

All of our investments meet the high quality standards specified in our investment policy. This policy dictates the maturity period and limits the amount of credit exposure to any one issue, issuer, and type of instrument.

As of March 31, 2009, our cash and cash equivalents of \$42.5 million were invested in money market accounts. Due to the nature and short duration of these financial instruments, we do not expect that an increase in interest rates would result in any material loss to our investment portfolio. As of March 31, 2009, we had no investments that matured in more than twelve months. We do not use derivative financial instruments for speculative or trading purposes.

ITEM 4:
Controls and Procedures

Our management, including our chief executive officer and chief financial officer, has evaluated our disclosure controls and procedures as of the end of the quarterly period covered by this Form 10-Q and has concluded that our disclosure controls and procedures are effective. They also concluded that there were no changes in our internal control over financial reporting that occurred during the quarterly period covered by this Form 10-Q that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1:
Legal Proceedings

From time to time we are involved in litigation incidental to the conduct of our business. We are not party to any lawsuit or proceeding that, in our opinion, is likely to seriously harm our business.

ITEM 1A:
Risk Factors

Risk Factors

Our Quarterly Results are Unpredictable and May Fluctuate Significantly

Our quarterly revenue and operating results are difficult to predict and may fluctuate significantly from quarter-to-quarter due to the unpredictability of our revenue components.

It is difficult for us to make accurate forecasts of product revenues. Product revenues consist of sales of test and diagnostics hardware as well as biometrics, medical imaging and test and diagnostics software. Sales of hardware and software products fluctuate based upon demand by our customers which is difficult to predict. Since our product revenues include the sales of hardware products which typically have lower gross margins than our other sources of revenue, product gross margins and overall profitability are also difficult to predict.

Contract revenues are also unpredictable. Making accurate predictions of contract revenues from new customers is difficult. The contract negotiation process can be lengthy and the fiscal period in which a new agreement will be entered into, if at all, and the financial terms of such an agreement are difficult to predict. Making accurate predictions of contract revenues from existing customers is also difficult, because such revenues are affected by the level of cooperation we receive from customers; the level of engineering services desired by customers; and the potential of contract termination once a project starts. In addition, customers may not pay us as anticipated under our contracts.

It is also difficult for us to make accurate forecasts of royalty revenues. Royalties are typically recognized in the quarter when we receive a report from a customer detailing sales and royalties due from the prior quarter, such as from the shipment of licensed integrated circuits. Royalties depend upon customer revenues which can be affected by factors beyond our ability to control or assess in advance. These factors include our customers' ability to generate sales and fluctuating sales volumes and prices of products containing our technology.

Our business is subject to a variety of additional risks, which could materially adversely affect quarterly and annual operating results, including:

- market acceptance of broadband technologies we supply by semiconductor or equipment companies;
- the extent and timing of new transactions with customers;
- changes in our and our customers' development schedules and levels of expenditure on research and development;

the loss of a strategic relationship or termination of a project by a customer;
equipment companies' acceptance of integrated circuits produced by our customers;
the loss by a customer of a strategic relationship with an equipment company customer;
announcements or introductions of new technologies or products by us or our competitors;
delays or problems in the introduction or performance of enhancements or of future generations of our technology;
failures or problems in our hardware or software products;
price pressure in the biometrics or test and diagnostics markets from our competitors;
delays in the adoption of new industry standards or changes in market perception of the value of new or existing standards;
competitive pressures resulting in lower contract revenues or royalty rates;
competitive pressures resulting in lower software or hardware product revenues;
personnel changes, particularly those involving engineering, technical, sales and marketing personnel;
costs associated with protecting our intellectual property;
the potential that customers could fail to make payments under their current contracts;
ADSL or VDSL market-related issues, including lower ADSL or VDSL chipset unit demand brought on by excess channel inventory and lower average selling prices for ADSL or VDSL chipsets as a result of market surpluses;
hardware manufacturing issues, including yield problems in our hardware platforms, and inventory buildup and obsolescence;
product gross margin may be affected by various factors including, but not limited to, product mix, product life cycle, and provision for excess and obsolete inventory;
significant fluctuations in demand for our hardware products;
new laws, changes to existing laws, or regulatory developments; and
general economic trends and other factors.

As a result of these factors, we believe that period-to-period comparisons of our revenue levels and operating results are not necessarily meaningful. You should not rely on our quarterly revenue and operating results to predict our future performance.

We Experienced Net Losses

We had a net annual loss during 2001, 2002, 2003, 2004, and 2005; and a quarterly loss in the first quarter of 2009. We may experience losses in the future if:

- the test and diagnostics, semiconductor, telecommunications or biometrics markets decline;
- new and/or existing customers do not choose to use our software or hardware products;
- new and/or existing customers do not choose to license and/or buy our patents; or
- new and/or existing customers do not choose to license our silicon IP for new chipset products or do not maintain or increase their revenues from sales of chipsets with our technology.

Our DSL Licensing and DSL Test and Diagnostics Businesses Depend Upon a Limited Number of Customers, Therefore We Derive a Significant Amount of Revenue from a Small Number of Customers

There are a relatively limited number of companies to which we can sell our DSL technology and a limited number of OEM suppliers to which we can sell our DSL test and diagnostics products in a manner consistent with our business model. If we fail to maintain relationships with our current customers or fail to establish a sufficient number of new customer relationships, our business could be seriously harmed. In the recent past, three of our DSL silicon IP customers decided to exit the DSL chipset business, and therefore we do not expect to generate additional revenue from these customers. In addition, our current and prospective customers may use their superior size and bargaining power to demand terms that are unfavorable to us.

Due to the limited number of customers to which we can license and/or sell our DSL technology and patents and our DSL hardware and software products, we derive a significant amount of revenue from a small number of customers. In 2008, we derived approximately 28% and 12% of our total revenue from Daphimo and Infineon, respectively. In 2007, we derived approximately 19%, 16%, and 10% of our total revenue from Infineon, Spirent, and Alcatel, respectively. In 2006, we derived approximately 26% and 20% of our total revenue from Infineon and ADI/Ikanos, respectively. On February 17, 2006 ADI sold its ADSL business relating to Aware technology to Ikanos and Ikanos replaced ADI as an Aware customer.

Our Business is Subject to Rapid Technological Change

The semiconductor and telecommunications industries for high-speed network access technologies are characterized by rapid technological change. The biometrics industry is also subject to rapid technological change and uncertainty. In these industries, new generations of products are introduced regularly and evolutionary improvements to existing products are required. Therefore, we face risks that others could introduce competing technology that renders our DSL or biometrics technology and products less desirable or obsolete. Also, the announcement of new technologies could cause our customers or their customers to delay or defer entering into arrangements for the use of our existing technology. Either of these events could seriously harm our business.

We expect that our business will depend to a significant extent on our ability to introduce new generations of communications and biometrics products as well as new technologies and products that keep pace with changes in these industries. We must continually devote significant engineering resources to achieving technical innovations and product developments. These developments are complex and require long development cycles. Moreover, we may have to make substantial investments in technological innovations and product developments before we can determine their commercial viability. We may lack sufficient financial resources to fund future development. Also, our customers may decide not to share certain research and development costs with us. Revenue from technological innovations, even if successfully developed, may not be sufficient to recoup the costs of development.

One element of our business strategy is to assume the risks of technology development failure while reducing such risks for our customers. In the past, we have spent significant amounts on development projects that did not produce any marketable technologies or products, and we cannot assure you that it will not occur again.

We Face Intense Competition from a Wide Range of Competitors

Our ability to generate revenues from our DSL technology depends largely on the willingness and ability of semiconductor manufacturers to design, build and sell integrated circuits based on our intellectual property. The DSL semiconductor industry is intensely competitive and has been characterized by price erosion, rapid technological change, short product life cycles, cyclical market patterns and increasing foreign and domestic competition.

As a silicon intellectual property supplier to the semiconductor industry, we face competition from internal development teams within potential semiconductor customers. We must convince potential customers to license or buy from us rather than develop technology internally. Furthermore, our semiconductor customers may choose to abandon joint development projects with us or develop chipsets themselves without using our technology. In addition to competition from internal development teams, we may compete against other independent suppliers of intellectual property for DSL. New chipset suppliers have also demonstrated a reluctance to enter the DSL market.

The market for DSL chipsets is intensely competitive. Our success as a silicon IP supplier requires that DSL equipment manufacturers buy chipsets from our semiconductor customers, and that telephone companies buy DSL equipment from those equipment manufacturers. Our customers' chipsets compete with products from other vendors of standards-based DSL chipsets, including Broadcom, Conexant, and TrendChip.

The markets for our DSL test and diagnostics hardware and software products are competitive and uncertain. We can give no assurance that phone companies will purchase significant quantities of products to test and maintain their DSL networks, or that if they do they will use our products. Our success as a supplier of hardware and software products for DSL test and diagnostics depends in large part on the willingness and ability of OEM customers to design, build and sell automated test heads, hand-held testers, and DSLAMs that incorporate or work with our products. Our success also depends upon our ability to market and sell to service providers.

Our DSL customers and their competitors have significantly greater financial, technological, manufacturing, marketing and personnel resources than we do. We can give no assurance that our OEM customers will continue to purchase products from us or that we will be able to compete effectively or that competitive pressures will not seriously harm our business.

Our DSL licensing and DSL test and diagnostics revenues are dependent upon the success of ADSL and VDSL services. ADSL and VDSL services offered over copper telephone networks also compete with alternative broadband transmission technologies that use other network architectures. Alternative technologies that use other network architectures to provide high-speed data service include cable modems using cable networks, wireless solutions using wireless networks, and optics technology using fiber optic networks. These alternative broadband transmission technologies may be more successful than ADSL or VDSL and we may not be able to participate in the markets involving these alternative technologies.

The markets for our biometrics products and services as well as our medical and digital imaging software products are competitive and uncertain. Many of our biometric software competitors have significantly greater financial, technological, marketing and personnel resources than we do. Also, we face intense competition from internal development teams within potential customers. We must convince potential customers to purchase products and services from us rather than develop software or perform services internally. Furthermore, customers, who have already purchased from us, may choose to stop purchasing our software and develop their own software.

We may be unable to compete successfully in our DSL licensing, DSL test and diagnostics, and biometrics and imaging businesses, and our competitive position may be adversely affected in the future by one or more of the factors described in this section.

Our Intellectual Property is Subject to Limited Protection

Because we are a technology provider, our ability to protect our intellectual property and to operate without infringing the intellectual property rights of others is critical to our success. We regard our technology as proprietary. Our patent portfolio includes approximately 42 U.S. patents and 98 foreign patents as well as a number of pending patent applications. We also rely on a combination of trade secrets, copyright and trademark law and non-disclosure agreements to protect our unpatented intellectual property. Despite these precautions, it may be possible for a third party to copy or otherwise obtain and use our technology without authorization.

As part of our silicon IP agreements, we typically work closely with our customers, who may also be potential competitors, and provide them with proprietary know-how necessary for their development of customized chipsets based on our DSL technology. Although our agreements contain non-disclosure provisions and other terms protecting our proprietary know-how and technology rights, it is possible that, despite these precautions, some of our customers might obtain from us proprietary information that they could use to compete with us in the marketplace. Although we intend to defend our intellectual property as necessary, the steps we have taken may be inadequate to prevent misappropriation.

In the future, we may be involved in legal action to enforce our intellectual property rights relating to our patents, copyrights or trade secrets. Any such litigation could be costly and time-consuming for us, even if we were to prevail. Moreover, even if we are successful in protecting our proprietary information, our competitors may independently develop technologies substantially equivalent or superior to our technology. The misappropriation of our technology or the development of competitive technology could seriously harm our business.

Our technology, software or hardware may infringe the intellectual property rights of others. A large and increasing number of participants in the telecommunications and compression industries have applied for or obtained patents. Some of these patent holders have demonstrated a readiness to commence litigation based on allegations of patent and other intellectual property infringement. Third parties may assert patent, copyright and other intellectual property rights to technologies that are important to our business. In the past, we have received claims from other companies that our technology infringes their patent rights. Intellectual property rights can be uncertain and can involve complex legal and factual questions. We may infringe the proprietary rights of others, which could result in significant liability for us. If we were found to have infringed any third party's patents, we could be subject to substantial damages or an injunction preventing us from conducting our business.

Our Ability to Obtain or Enforce Patents Could be Affected by New Laws, Regulations or Rules

We have an active program to protect our proprietary technology through the filing of patents. We have also pursued the license and/or sale