

ALERE INC.  
Form 10-Q  
November 08, 2010

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**UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

**FORM 10-Q**

**(Mark One)**

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

**For the quarterly period ended September 30, 2010**

**OR**

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

**For the transition period from \_\_\_\_\_ to \_\_\_\_\_**

**COMMISSION FILE NUMBER 001-16789**

**ALERE INC.**

(Exact name of registrant as specified in its charter)

**DELAWARE**

(State or other jurisdiction of incorporation or organization)

**04-3565120**

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

**51 SAWYER ROAD, SUITE 200**

**WALTHAM, MASSACHUSETTS 02453**

(Address of principal executive offices)(Zip code)

**(781) 647-3900**

(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

**Yes  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 the definitions 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

(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

**Yes  No**

The number of shares outstanding of the registrant's common stock, par value of \$0.001 per share, as of November 1, 2010 was 84,848,054.



**ALERE INC.**  
**REPORT ON FORM 10-Q**  
**For the Quarterly Period Ended September 30, 2010**

*This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Readers can identify these statements by forward-looking words such as may, could, should, would, intend, will, expect, anticipate, believe, estimate, continue or similar words. A number of important factors could cause actual results of Alere Inc. and its subsidiaries to differ materially from those indicated by such forward-looking statements. These factors include, but are not limited to, the risk factors detailed in Part I, Item 1A, Risk Factors, of our Annual Report on Form 10-K, as amended, for the fiscal year ended December 31, 2009 and other risk factors identified herein or from time to time in our periodic filings with the Securities and Exchange Commission. Readers should carefully review these risk factors, and should not place undue reliance on our forward-looking statements. These forward-looking statements are based on information, plans and estimates at the date of this report. We undertake no obligation to update any forward-looking statements to reflect changes in underlying assumptions or factors, new information, future events or other changes.*

*Unless the context requires otherwise, references in this Quarterly Report on Form 10-Q to we, us and our refer to Alere Inc. and its subsidiaries.*

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**Table of Contents****PART I FINANCIAL INFORMATION****ITEM 1. FINANCIAL STATEMENTS****ALERE INC. AND SUBSIDIARIES  
CONSOLIDATED STATEMENTS OF OPERATIONS**

(unaudited)

(in thousands, except per share amounts)

	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>September 30,</b>		<b>September 30,</b>	
	<b>2010</b>	<b>2009</b>	<b>2010</b>	<b>2009</b>
Net product sales	\$ 363,433	\$ 370,742	\$ 1,063,549	\$ 972,603
Services revenue	171,123	134,075	497,292	383,279
Net product sales and services revenue	534,556	504,817	1,560,841	1,355,882
License and royalty revenue	4,123	7,848	16,052	20,588
<b>Net revenue</b>	<b>538,679</b>	<b>512,665</b>	<b>1,576,893</b>	<b>1,376,470</b>
Cost of net product sales	170,549	169,213	500,990	446,352
Cost of services revenue	80,782	61,209	238,991	172,123
Cost of net product sales and services revenue	251,331	230,422	739,981	618,475
Cost of license and royalty revenue	1,802	1,946	5,411	5,352
<b>Cost of net revenue</b>	<b>253,133</b>	<b>232,368</b>	<b>745,392</b>	<b>623,827</b>
<b>Gross profit</b>	<b>285,546</b>	<b>280,297</b>	<b>831,501</b>	<b>752,643</b>
Operating expenses:				
Research and development	32,434	27,720	96,187	80,811
Sales and marketing	125,606	116,280	369,016	316,880
General and administrative	96,131	86,447	284,155	247,377
Gain on disposition		(3,355)		(3,355)
<b>Operating income</b>	<b>31,375</b>	<b>53,205</b>	<b>82,143</b>	<b>110,930</b>
Interest expense, including amortization of original issue discounts and deferred financing costs	(34,180)	(30,580)	(100,921)	(72,092)
Other income (expense), net	7,525	1,187	14,681	1,018
<b>Income (loss) from continuing operations before provision (benefit) for income taxes</b>	<b>4,720</b>	<b>23,812</b>	<b>(4,097)</b>	<b>39,856</b>
Provision (benefit) for income taxes	(167)	6,001	(964)	12,901
<b>Income (loss) from continuing operations before equity earnings of unconsolidated entities, net of tax</b>	<b>4,887</b>	<b>17,811</b>	<b>(3,133)</b>	<b>26,955</b>

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Equity earnings (losses) of unconsolidated entities, net of tax	(62)	2,059	8,195	5,539
Income from continuing operations	4,825	19,870	5,062	32,494
Income (loss) from discontinued operations, net of tax	2	413	11,913	(1,100)
<b>Net income</b>	<b>4,827</b>	<b>20,283</b>	<b>16,975</b>	<b>31,394</b>
Less: Net income attributable to non-controlling interests	1,494	141	1,167	465
<b>Net income attributable to Alere Inc. and Subsidiaries</b>	<b>3,333</b>	<b>20,142</b>	<b>15,808</b>	<b>30,929</b>
Preferred stock dividends	(6,147)	(5,843)	(18,001)	(17,056)
<b>Net income (loss) available to common stockholders</b>	<b>\$ (2,814)</b>	<b>\$ 14,299</b>	<b>\$ (2,193)</b>	<b>\$ 13,873</b>
Basic net income (loss) per common share attributable to Alere Inc. and Subsidiaries:				
Income (loss) from continuing operations	\$ (0.03)	\$ 0.17	\$ (0.17)	\$ 0.19
Income (loss) from discontinued operations		0.01	0.14	(0.01)
Net income (loss) per common share	\$ (0.03)	\$ 0.18	\$ (0.03)	\$ 0.17
Diluted net income (loss) per common share attributable to Alere Inc. and Subsidiaries:				
Income (loss) from continuing operations	\$ (0.03)	\$ 0.17	\$ (0.17)	\$ 0.18
Income (loss) from discontinued operations		0.01	0.14	(0.01)
Net income (loss) per common share	\$ (0.03)	\$ 0.17	\$ (0.03)	\$ 0.17
<b>Weighted average shares-basic</b>	<b>84,796</b>	<b>81,625</b>	<b>84,269</b>	<b>79,682</b>
<b>Weighted average shares-diluted</b>	<b>84,796</b>	<b>83,418</b>	<b>84,269</b>	<b>81,110</b>

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

**Table of Contents****ALERE INC. AND SUBSIDIARIES  
CONSOLIDATED BALANCE SHEETS**

(unaudited)

(in thousands, except par value)

	<b>September 30, 2010</b>	<b>December 31, 2009</b>
<b>ASSETS</b>		
<b>Current assets:</b>		
Cash and cash equivalents	\$ 487,581	\$ 492,773
Restricted cash	2,699	2,424
Marketable securities	5,684	947
Accounts receivable, net of allowances of \$16,474 and \$12,462 at September 30, 2010 and December 31, 2009, respectively	384,828	354,453
Inventories, net	262,466	221,539
Deferred tax assets	34,313	66,492
Income tax receivable	1,680	1,107
Prepaid expenses and other current assets	71,283	73,075
Assets held for sale		54,148
<b>Total current assets</b>	<b>1,250,534</b>	<b>1,266,958</b>
Property, plant and equipment, net	369,795	324,388
Goodwill	3,727,596	3,463,358
Other intangible assets with indefinite lives	66,603	43,644
Finite-lived intangible assets, net	1,708,260	1,686,427
Deferred financing costs, net, and other non-current assets	82,208	72,762
Investments in unconsolidated entities	62,297	63,965
Marketable securities	21,012	1,503
Deferred tax assets	22,418	20,987
<b>Total assets</b>	<b>\$ 7,310,723</b>	<b>\$ 6,943,992</b>
<b>LIABILITIES AND EQUITY</b>		
<b>Current liabilities:</b>		
Current portion of long-term debt	\$ 15,030	\$ 18,970
Current portion of capital lease obligations	1,833	899
Accounts payable	115,429	126,322
Accrued expenses and other current liabilities	303,154	279,732
Payable to joint venture, net	4,773	533
Deferred gain on joint venture	288,565	
Liabilities related to assets held for sale		11,558
<b>Total current liabilities</b>	<b>728,784</b>	<b>438,014</b>
<b>Long-term liabilities:</b>		
Long-term debt, net of current portion	2,381,153	2,128,515



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Capital lease obligations, net of current portion	939	940
Deferred tax liabilities	427,485	442,049
Deferred gain on joint venture		288,767
Other long-term liabilities	125,973	116,818
<b>Total long-term liabilities</b>	<b>2,935,550</b>	<b>2,977,089</b>
<b>Commitments and contingencies</b> (Note 17)		
Redeemable non-controlling interest	50,371	
<b>Stockholders equity:</b>		
Series B preferred stock, \$0.001 par value (liquidation preference: \$826,184 at September 30, 2010 and \$793,696 at December 31, 2009); Authorized: 2,300 shares; Issued and outstanding: 2,065 shares at September 30, 2010 and 1,984 shares at December 31, 2009	712,392	694,427
Common stock, \$0.001 par value; Authorized: 150,000 shares; Issued and outstanding: 84,864 shares at September 30, 2010 and 83,567 at December 31, 2009	85	84
Additional paid-in capital	3,229,310	3,195,372
Accumulated deficit	(344,066)	(359,874)
Accumulated other comprehensive loss	(4,904)	(2,454)
<b>Total stockholders equity</b>	<b>3,592,817</b>	<b>3,527,555</b>
Non-controlling interests	3,201	1,334
<b>Total equity</b>	<b>3,596,018</b>	<b>3,528,889</b>
<b>Total liabilities and equity</b>	<b>\$ 7,310,723</b>	<b>\$ 6,943,992</b>

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

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**ALERE INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(unaudited)  
(in thousands)

	<b>Nine Months Ended September</b>	
	<b>30,</b>	
	<b>2010</b>	<b>2009</b>
<b>Cash Flows from Operating Activities:</b>		
Net income	\$ 16,975	\$ 31,394
Income (loss) from discontinued operations, net of tax	11,913	(1,100)
Income from continuing operations	5,062	32,494
Adjustments to reconcile income from continuing operations to net cash provided by operating activities:		
Non-cash interest expense related to amortization of original issue discounts and write-off of deferred financing costs	10,284	6,461
Depreciation and amortization	275,507	224,408
Non-cash stock-based compensation expense	22,947	20,287
Impairment of inventory	712	838
Impairment of long-lived assets	618	3,181
Loss on sale of fixed assets	607	611
Equity earnings of unconsolidated entities, net of tax	(8,195)	(5,539)
Deferred income taxes	(33,256)	(10,621)
Other non-cash items	(1,378)	1,069
Changes in assets and liabilities, net of acquisitions:		
Accounts receivable, net	(2,553)	(47,232)
Inventories, net	(29,107)	(7,657)
Prepaid expenses and other current assets	6,752	3,456
Accounts payable	(19,423)	19,531
Accrued expenses and other current liabilities	23,121	(10,670)
Other non-current liabilities	(21,984)	10,306
Net cash provided by continuing operations	229,714	240,923
Net cash provided by (used in) discontinued operations	(390)	4,376
<b>Net cash provided by operating activities</b>	<b>229,324</b>	<b>245,299</b>
<b>Cash Flows from Investing Activities:</b>		
Purchases of property, plant and equipment	(68,457)	(74,459)
Proceeds from sale of property, plant and equipment	642	672
Cash paid for acquisitions and transaction costs, net of cash acquired	(465,583)	(397,467)
Increase in marketable securities	(17,887)	
Net cash received from equity method investments	10,835	12,003
Increase in other assets	(1,717)	(5,056)
Net cash used in continuing operations	(542,167)	(464,307)
Net cash provided by (used in) discontinued operations	63,446	(271)

<b>Net cash used in investing activities</b>	(478,721)	(464,578)
<b>Cash Flows from Financing Activities:</b>		
Increase in restricted cash	(280)	(252)
Cash paid for financing costs	(9,590)	(15,331)
Proceeds from issuance of common stock, net of issuance costs	17,839	15,539
Proceeds on long-term debt	400,000	631,176
Repayment on long-term debt	(7,313)	(8,344)
Net proceeds (repayments) from revolving lines-of-credit	(146,985)	(3,453)
Excess tax benefit on exercised stock options	1,300	2,152
Principal payments of capital lease obligations	(1,270)	(640)
Other	(509)	(115)
Net cash provided by continuing operations	253,192	620,732
Net cash used in discontinued operations		(8)
<b>Net cash provided by financing activities</b>	253,192	620,724
Foreign exchange effect on cash and cash equivalents	(8,987)	13,102
Net increase (decrease) in cash and cash equivalents	(5,192)	414,547
Cash and cash equivalents, beginning of period	492,773	141,324
<b>Cash and cash equivalents, end of period</b>	\$ 487,581	\$ 555,871

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

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**ALERE INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
(unaudited)

**(1) Basis of Presentation of Financial Information**

The accompanying consolidated financial statements of Alere Inc. are unaudited. In the opinion of management, the unaudited consolidated financial statements contain all adjustments considered normal and recurring and necessary for their fair presentation. Interim results are not necessarily indicative of results to be expected for the year. These interim financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America for interim financial information and in accordance with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, these consolidated financial statements do not include all of the information and footnotes necessary for a complete presentation of financial position, results of operations and cash flows. Our audited consolidated financial statements for the year ended December 31, 2009 included information and footnotes necessary for such presentation and were included in our Annual Report on Form 10-K, as amended, filed with the Securities and Exchange Commission, or SEC, on April 16, 2010. These unaudited consolidated financial statements should be read in conjunction with our audited consolidated financial statements and notes thereto for the year ended December 31, 2009.

Certain reclassifications of prior period amounts have been made to conform to current period presentation. These reclassifications had no effect on net income or equity.

**(2) Cash and Cash Equivalents**

We consider all highly-liquid cash investments with original maturities of three months or less at the date of acquisition to be cash equivalents. At September 30, 2010, our cash equivalents consisted of money market funds.

**(3) Inventories**

Inventories are stated at the lower of cost (first in, first out) or market and are comprised of the following (in thousands):

	<b>September 30, 2010</b>	<b>December 31, 2009</b>
Raw materials	\$ 86,162	\$ 62,397
Work-in-process	63,100	56,338
Finished goods	113,204	102,804
	<b>\$ 262,466</b>	<b>\$ 221,539</b>

**(4) Stock-based Compensation**

We recorded stock-based compensation expense in our consolidated statements of operations for the three and nine months ended September 30, 2010 and 2009, respectively, as follows (in thousands):

	<b>Three Months Ended September 30,</b>		<b>Nine Months Ended September 30,</b>	
	<b>2010</b>	<b>2009</b>	<b>2010</b>	<b>2009</b>
Cost of sales	\$ 589	\$ 572	\$ 1,390	\$ 1,480
Research and development	1,543	1,419	5,415	3,740
Sales and marketing	1,181	1,079	3,094	2,958
General and administrative	3,950	4,732	13,048	12,109
	7,263	7,802	22,947	20,287
Benefit for income taxes	(1,295)	(1,653)	(4,633)	(4,083)
Stock-based compensation, net of tax	<b>\$ 5,968</b>	<b>\$ 6,149</b>	<b>\$ 18,314</b>	<b>\$ 16,204</b>



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**ALERE INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**  
(unaudited)

**(5) Net Income (Loss) per Common Share**

The following table sets forth the computation of basic and diluted net income (loss) per common share for the periods presented (in thousands, except per share data):

	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>September 30,</b>		<b>September 30,</b>	
	<b>2010</b>	<b>2009</b>	<b>2010</b>	<b>2009</b>
Income from continuing operations	\$ 4,825	\$ 19,870	\$ 5,062	\$ 32,494
Less: Preferred stock dividends	(6,147)	(5,843)	(18,001)	(17,056)
Income (loss) from continuing operations attributable to common shares	(1,322)	14,027	(12,939)	15,438
Less: Net income attributable to non-controlling interest	1,494	141	1,167	465
<b>Income (loss) from continuing operations attributable to Alere Inc. and Subsidiaries</b>	<b>(2,816)</b>	<b>13,886</b>	<b>(14,106)</b>	<b>14,973</b>
Income (loss) from discontinued operations	2	413	11,913	(1,100)
Net income (loss) available to common stockholders	\$ (2,814)	\$ 14,299	\$ (2,193)	\$ 13,873

**Three Months Ended**  
**September 30,**

**Nine Months Ended**  
**September 30,**

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933, as amended (the "Securities Act");

(ii) To reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement. Notwithstanding the foregoing, any increase or decrease in the volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement; and

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(iii) To include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement;

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*provided, however*, that paragraphs (1)(i) and (1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), that are incorporated by reference in this Registration Statement.

(2) That, for the purposes of determining any liability under the Securities Act, each post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at the time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

*Item 512(b) of Regulation S-K.* The Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in this Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

*Item 512(h) of Regulation S-K.* Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the indemnification provisions described herein, or otherwise, the Registrant has been informed that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

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### SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the Town of Concord, Commonwealth of Massachusetts, on July 31, 2003.

MANUFACTURERS' SERVICES LIMITED

By: /s/ ALBERT A. NOTINI

---

Albert A. Notini  
Chief Financial Officer and Executive Vice President

### SIGNATURES AND POWER OF ATTORNEY

We, the undersigned officers and directors of the Registrant, hereby severally constitute and appoint Robert C. Bradshaw, Albert A. Notini, and Alan R. Cormier and each of them singly, our true and lawful attorneys with full power to any of them, and to each of them singly, to sign for us and in our names in the capacities indicated below the Registration Statement on Form S-3 filed herewith and any and all pre-effective and post-effective amendments to said Registration Statement and generally to do all such things in our name and behalf in our capacities as officers and directors to enable the Registrant to comply with the provisions of the Securities Act of 1933, as amended, and all requirements of the Securities and Exchange Commission, hereby ratifying and confirming our signatures as they may be signed by our said attorneys, or any of them, to said Registration Statement and any and all amendments thereto.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

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Signature	Title	Date
<u>/s/ ROBERT C. BRADSHAW</u> Robert C. Bradshaw	Chairman of the Board and Director, Chief Executive Officer and President (Principal Executive Officer)	July 31, 2003
<u>/s/ ALBERT A. NOTINI</u> Albert A. Notini	Director, Executive Vice President and Chief Financial Officer (Principal Financial Officer)	July 31, 2003
<u>/s/ RICHARD J. GAYNOR</u> Richard J. Gaynor	Vice President and Corporate Controller (Principal Accounting Officer)	July 31, 2003
<u>/s/ ROBIN ESTERSON</u> Robin Esterson	Director	July 31, 2003

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<u>/s/ KARL WYSS</u> Karl Wyss	Director	July 31, 2003
<u>/s/ WILLIAM J. WEYAND</u> William Weyand	Director	July 31, 2003
<u></u> Dermott O'Flanagan	Director	
<u></u> Curtis S. Wozniak	Director	
<u>/s/ JOHN P. CUNNINGHAM</u> John P. Cunningham	Director	July 31, 2003

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## EXHIBIT INDEX

EXHIBIT NUMBER	DESCRIPTION
4.1	Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to the Registrant's Registration Statement on Form S-1, as amended (File No. 333-96227), filed on February 4, 2000).
4.2	Certificate of Designations of 5.25% Series A Convertible Preferred Stock of the Registrant (incorporated by reference to Exhibit 4.2 to the Registrant's Current Report on Form 8-K filed on March 18, 2002).
4.3	Amended and Restated By-laws of the Registrant (incorporated by reference to Exhibit 3.2 to the Registrant's Registration Statement on Form S-1, as amended (File No. 333-96227), filed on February 4, 2000).



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<b>EXHIBIT NUMBER</b>	<b>DESCRIPTION</b>
4.4	Form of Warrant to Purchase Common Stock (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed on July 9, 2003).
4.5	Certificate of Designations of 4.5% Series B Convertible Preferred stock of the Registrant (incorporated by reference to Exhibit 4.2 to the Registrant's Current Report on Form 8-K filed on July 9, 2003).
4.6	Registration Rights Agreement dated as of July 1, 2003, by and among the Registrant, U.S. Bancorp Piper Jaffray and RBC Dain Rauscher Inc. and the Buyers as defined therein (incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed on July 9, 2003).
5.1	Opinion of Hale and Dorr LLP.
23.1	Consent of PricewaterhouseCoopers LLP.
23.2	Consent of Hale and Dorr LLP (included in Exhibit 5.1 filed herewith).
24.1	Power of Attorney (included on the signature page of this registration statement).