NUVASIVE INC
Form 10-Q
November 05, 2010

Table of Contents

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-Q

(Mark One)

þ **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

o **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 000-50744
NUVASIVE, INC.
(Exact name of registrant as specified in its charter)

Delaware	**33-0768598**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**

7475 Lusk Boulevard
San Diego, CA 92121
(Address of principal executive offices, including zip code)
(858) 909-1800
(Registrant s telephone number, including area code)
(Former name, former address and former fiscal year, if changed since last report)

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 þ No o

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 þ No o

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 þ	Accelerated filer o	Non-accelerated filer o (Do not check if a smaller reporting company)	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 o No þ

As of October 29, 2010, there were 39,427,829 shares of the registrant s common stock outstanding.

NUVASIVE, INC.
QUARTERLY REPORT ON FORM 10-Q
September 30, 2010
TABLE OF CONTENTS

PART I FINANCIAL INFORMATION	3
Item 1. Financial Statements	3
Condensed Consolidated Balance Sheets as of September 30, 2010 (Unaudited) and December 31, 2009	3
Unaudited Condensed Consolidated Statements of Operations for the three and nine months ended September 30, 2010 and 2009	4
Unaudited Condensed Consolidated Statements of Cash Flows for the nine months ended September 30, 2010 and 2009	5
Notes to Unaudited Condensed Consolidated Financial Statements	6
Item 2. Management s Discussion and Analysis of Financial Condition and Results of Operations	18
Item 3. Quantitative and Qualitative Disclosures About Market Risk	25
Item 4. Controls and Procedures	25
PART II OTHER INFORMATION	26
Item 1. Legal Proceedings	26
Item 1A. Risk Factors	27
Item 5. Other Information	27
Item 6. Exhibits	29
SIGNATURES	30

EX-31.1
EX-31.2
EX-32
EX-101 INSTANCE DOCUMENT
EX-101 SCHEMA DOCUMENT
EX-101 CALCULATION LINKBASE DOCUMENT
EX-101 LABELS LINKBASE DOCUMENT
EX-101 PRESENTATION LINKBASE DOCUMENT

Table of Contents

PART I. FINANCIAL INFORMATION
Item 1. Financial Statements

NUVASIVE, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands, except par value)

	September 30, 2010 (Unaudited)	December 31, 2009
ASSETS		
Current assets:		
Cash and cash equivalents	$ 70,590	$ 65,413
Short-term marketable securities	106,546	99,279
Accounts receivable, net	71,617	58,462
Inventory	98,789	90,191
Prepaid expenses and other current assets	4,520	3,757
Total current assets	352,062	317,102
Property and equipment, net	101,120	82,602
Long-term marketable securities	39,629	39,968
Intangible assets, net	101,670	103,338
Goodwill	101,938	101,938
Other assets	14,470	7,872
Total assets	$ 710,889	$ 652,820
LIABILITIES AND STOCKHOLDERS EQUITY		
Current liabilities:		
Accounts payable and accrued liabilities	$ 43,798	$ 33,302
Accrued payroll and related expenses	13,191	19,111
Royalties payable	2,619	2,334
Total current liabilities	59,608	54,747
Convertible senior notes	230,000	230,000
Long-term acquisition related liabilities	31,264	30,694
Other long-term liabilities	29,480	27,528
Commitments and contingencies		
Noncontrolling interests	12,276	13,629
Stockholders equity:		
Common stock, $0.001 par value; 70,000 shares authorized, 39,419 and 38,774 issued and outstanding at September 30, 2010 and December 31, 2009, respectively	39	39
Additional paid-in capital	520,948	485,757
Accumulated other comprehensive income	621	126
Accumulated deficit	(173,347)	(189,700)
Total stockholders equity	348,261	296,222
Total liabilities and stockholders equity	$ 710,889	$ 652,820

See accompanying notes to unaudited condensed consolidated financial statements.

Table of Contents

NUVASIVE, INC.
UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except per share data)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2010	**2009**	**2010**	**2009**
Revenues	$120,262	$94,916	$348,933	$263,405
Cost of goods sold, excluding amortization of purchased technology	21,580	15,874	62,037	43,108
Gross profit	98,682	79,042	286,896	220,297
Operating expenses:				
Sales, marketing and administrative	77,717	61,720	230,104	182,521
Research and development	10,085	9,874	31,989	26,638
Amortization of intangible assets	1,342	1,364	4,047	4,072
Total operating expenses	89,144	72,958	266,140	213,231
Interest income	200	203	567	1,318
Interest expense	(1,668)	(1,609)	(5,005)	(5,439)
Other income (expense), net	(6)	188	81	324
Total interest and other income (expense), net	(1,474)	(1,218)	(4,357)	(3,797)
Income before income tax (benefit) expense	8,064	4,866	16,399	3,269
Income tax (benefit) expense	(40)	430	1,399	1,053
Consolidated net income	$ 8,104	$ 4,436	$ 15,000	$ 2,216
Net loss attributable to noncontrolling interests	$ (438)	$ (628)	$ (1,353)	$ (1,311)
Net income attributable to NuVasive, Inc.	$ 8,542	$ 5,064	$ 16,353	$ 3,527
Net income per share attributable to NuVasive, Inc.:				
Basic net income per share	$ 0.22	$ 0.13	$ 0.42	$ 0.10
Diluted net income per share	$ 0.21	$ 0.13	$ 0.40	$ 0.09
Weighted average shares outstanding:				
Basic	39,394	37,733	39,180	37,008
Diluted	40,396	39,216	40,389	38,384

See accompanying notes to unaudited condensed consolidated financial statements.

Table of Contents

NUVASIVE, INC.
UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	Nine Months Ended September 30,	
	2010	**2009**
Operating activities:		
Consolidated net income	$ 15,000	$ 2,216
Adjustments to reconcile consolidated net income to net cash provided by operating activities:		
Depreciation and amortization	27,404	22,005
Stock-based compensation	21,304	18,165
Lease abandonment charge reversal		(1,997)
Allowance for excess and obsolete inventory	1,682	2,470
Allowance for doubtful accounts and sales return reserves, net of write-offs	(1,039)	1,175
Amortization of debt issuance costs	1,120	1,065
Amortization of premium/discount on marketable securities	890	62
Other non-cash adjustments	2,604	1,121
Changes in operating assets and liabilities, net of effects from acquisitions:		
Accounts receivable	(11,465)	(329)
Inventory	(10,043)	(19,027)
Prepaid expenses and other current assets	(3,878)	788
Accounts payable and accrued liabilities	6,316	7,361
Accrued payroll and related expenses	(5,973)	(2,209)
Net cash provided by operating activities	43,922	32,866
Investing activities:		
Cash paid for acquisitions and investments		(44,055)
Purchases of property and equipment	(36,622)	(21,250)
Purchases of marketable securities	(150,045)	(64,642)
Sales of marketable securities	142,313	89,336
Other assets	(659)	
Net cash used in investing activities	(45,013)	(40,611)
Financing activities:		
Issuance of common stock	12,768	9,618
Other assets	(7,722)	
Tax benefits related to stock-based compensation awards	1,118	
Net cash provided by financing activities	6,164	9,618
Effect of exchange rate changes on cash	104	85
Increase in cash and cash equivalents	5,177	1,958
Cash and cash equivalents at beginning of period	65,413	132,318
Cash and cash equivalents at end of period	$ 70,590	$134,276

See accompanying notes to unaudited condensed consolidated financial statements.

NuVasive, Inc.

Notes to Unaudited Condensed Consolidated Financial Statements

1. Description of Business and Basis of Presentation

Description of Business

NuVasive®, Inc. (the Company or NuVasive) was incorporated in Delaware on July 21, 1997. The Company designs, develops and markets products for the surgical treatment of spine disorders. The Company began commercializing its products in 2001. Its product portfolio is focused primarily on applications for spine fusion surgery. Its principal product offering includes a minimally disruptive surgical platform called Maximum Access Surgery, or MAS®, as well as a growing set of offerings in the biologics, cervical and motion preservation areas. In the spine surgery market, the Company s currently-marketed products are primarily used to enable access to the spine and to perform restorative and fusion procedures. The Company also focuses significant research and development efforts on MAS and motion preservation products in the areas of (i) fusion procedures in the lumbar and thoracic spine; (ii) cervical fixation products; and (iii) motion preservation products such as the Company s total disc replacement products. The Company dedicates significant resources to sales and marketing efforts, including training spine surgeons on its unique technology and products.

The Company s primary business model is to loan its MAS systems to surgeons and hospitals who purchase disposables and implants for use in individual procedures. In addition, for larger customers, NeuroVision®, MaXcess® and surgical instrument sets are placed with hospitals for an extended period at no up-front cost to them. The Company also offers a range of bone allograft in patented saline packaging, disposables and spine implants, which include its branded CoRoent® products and fixation devices such as rods, plates and screws. Implants and disposables are shipped from the Company s inventories. The Company sells an immaterial quantity of MAS instrument sets, MaXcess and NeuroVision systems to hospitals.

Basis of Presentation

The accompanying unaudited condensed consolidated financial statements have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission. Pursuant to these rules and regulations, the Company has condensed or omitted certain information and footnote disclosures it normally includes in its annual consolidated financial statements prepared in accordance with accounting principles generally accepted in the United States (GAAP). In the opinion of management, the consolidated financial statements include all adjustments necessary, which are of a normal and recurring nature, for the fair presentation of the Company s financial position and of the results of operations and cash flows for the periods presented.

The accompanying unaudited condensed consolidated financial statements as of December 31, 2009 and for the nine months ended September 30, 2010 and 2009 include the accounts of the Company and its wholly owned subsidiaries, as well as the accounts of a variable interest entity, Progentix Orthobiology, B.V. (Progentix), which is consolidated pursuant to existing guidance issued by the Financial Accounting Standards Board (FASB). All significant intercompany accounts and transactions have been eliminated in consolidation.

These financial statements should be read in conjunction with the audited consolidated financial statements and notes thereto for the year ended December 31, 2009 included in NuVasive s Annual Report on Form 10-K, as amended, filed with the Securities and Exchange Commission. Operating results for the three or nine months ended September 30, 2010 are not necessarily indicative of the results that may be expected for any other interim period or for the full year. The balance sheet at December 31, 2009 has been derived from the audited financial statements at that date, but does not include all of the information and footnotes required by GAAP for complete financial statements.

Reclassifications

Certain reclassifications have been made to the prior year consolidated balance sheet to conform to the current year presentation.

Table of Contents

Business Combinations

In accordance with authoritative guidance for business combinations, goodwill and other long-term liabilities on the December 31, 2009 condensed consolidated balance sheet have been retrospectively adjusted to reflect the finalization of the purchase price allocation for assets and liabilities acquired from Cervitech®, Inc. (Cervitech) in May 2009 (Note 3).

2. Significant Accounting Policies

Recently Adopted Accounting Standards

Variable Interest Entities

Effective January 1, 2010, the Company adopted a newly issued accounting standard which provides guidance for the consolidation of variable interest entities and requires an enterprise to determine whether its variable interest or interests give it a controlling financial interest in a variable interest entity. This amended consolidation guidance for variable interest entities replaces the existing quantitative approach for identifying which enterprise should consolidate a variable interest entity, which was based on which enterprise is exposed to a majority of the risks and rewards, with a qualitative approach, based on which enterprise has both (1) the power to direct the economically significant activities of the entity and (2) the obligation to absorb losses of, or the right to receive benefits from, the entity that could potentially be significant to the variable interest entity. The adoption of this standard did not have an impact on the Company s consolidated results of operations or financial position. Determination about whether an enterprise should consolidate a variable interest entity is required to be evaluated continuously as changes to existing relationships or future transactions may result in the Company consolidating or deconsolidating current or future business arrangements.

Fair Value Measurements Disclosures

Effective January 1, 2010, the Company adopted the FASB s updated guidance related to fair value measurements and disclosures, which requires a reporting entity to disclose separately the amounts of significant transfers in and out of Level 1 and Level 2 fair value measurements and to describe the reasons for the transfers. In addition, in the reconciliation for fair value measurements using significant unobservable inputs, or Level 3, a reporting entity should disclose separately information related to purchases, sales, issuances, and settlements information to be included in the rollforward of activity. The updated guidance also requires that an entity provide fair value measurement disclosures for each class of assets and liabilities and disclosures about the valuation techniques and inputs used to measure fair value for both recurring and non-recurring fair value measurements for Level 2 and Level 3 fair value measurements. The guidance is effective for interim or annual financial reporting periods beginning after December 15, 2009, except for the disclosures about purchases, sales, issuances and settlements in the rollforward activity in Level 3 fair value measurements, which are effective for fiscal years beginning after December 15, 2010 and for interim periods within those fiscal years. Therefore, the Company has not yet adopted the guidance with respect to the rollforward activity in Level 3 fair value measurements. The Company has updated its disclosures to comply with the updated guidance; however, adoption of the updated guidance did not have an impact on the Company s consolidated results of operations or financial position.

3. Cervitech® Inc. Acquisition

On May 8, 2009 (the Closing Date), the Company completed the purchase of all of the outstanding shares of Cervitech, a Delaware corporation, for an initial payment of approximately $49 million consisting of cash totaling approximately $25 million and the issuance of 638,261 shares of NuVasive common stock to certain stockholders of Cervitech. Cervitech, a New Jersey based company, is focused on the clinical approval of the PCM® cervical disc system, a motion preserving total disc replacement device in the United States. This acquisition allows NuVasive the potential to accelerate its entry into the growing mechanical cervical disc replacement market. In addition to the initial payment, the Company may be obligated to make an additional milestone payment of $33 million if the U.S. Food and Drug Administration (FDA) issues an approval order allowing the commercialization of Cervitech s PCM device in the United States with an intended use for treatment of degenerative disc disease. The milestone payment may be made in cash or a combination of cash and up to half in NuVasive common stock, at the Company s discretion. The fair value of the contingent consideration at the Closing Date was determined to be $29.7 million using a probability-weighted discounted cash flow model with the key assumptions being the interest rate, the timing of expected approval and the

probability assigned to the milestone being achieved.

Table of Contents

The assets and liabilities of Cervitech were recorded at their respective acquisition date estimated fair values, and identifiable intangible assets were recorded at fair value. As previously disclosed, the preliminary allocation of the estimated purchase price was based on management s preliminary valuation of the fair value of tangible assets, intangible assets and in-process research and development acquired and liabilities assumed as of the Closing Date and such estimates were subject to revision. During May 2010, the Company finalized the purchase accounting adjustments to account for facts related to deferred tax assets and liabilities acquired that existed at the Closing Date. Accordingly, the Company reduced the amount of Goodwill recorded on the acquisition of Cervitech by $0.9 million retrospectively to the Closing Date as follows *(in thousands)*:

	Initial Estimate of Fair Value	**Purchase Price Adjustments**	**Final Fair Value**
Goodwill	$55,443	$ (945)	$54,498
Deferred income tax liabilities, net	$13,560	$ 945	$12,615

The final allocation of the purchase price at December 31, 2009 is presented in the following table (*in thousands*):

	Estimated Fair Value	**Estimated Useful Life**
Total current assets	$ 1,233	
Property, plant and equipment	59	
Developed technology	700	14 years
Non-compete agreement	100	2 years
Trade name	700	10 years
In-process research and development	34,800	14 years
Goodwill	54,498	
Current liabilities	(483)	
Deferred income tax liabilities	(12,615)	
Total estimated purchase price allocation	$ 78,992	

Of the total $79.0 million purchase price, $34.8 million and $54.5 million was allocated to in-process research and development (IPR&D) and goodwill, respectively, based on management s valuation of the fair value of the assets acquired and liabilities assumed on the date of acquisition. The IPR&D, which has been capitalized as an indefinite-lived asset, relates to the future commercialization of Cervitech s PCM device in the United States with an intended use for treatment of degenerative disc disease. The projected cash flows utilized in management s valuation of the fair value of the IPR&D acquired were based on key assumptions such as estimates of revenues and operating profits related to the IPR&D considering its stage of development; the time and resources needed to complete the development and approval of the related product candidate; the life of the potential commercialized product and associated risks, including the inherent difficulties and uncertainties in developing a product such as obtaining marketing approval from the FDA and other regulatory agencies; and risks related to the viability of and potential alternative treatments in any future target markets. The Company submitted a premarket approval (PMA) application for FDA approval for the PCM device in the first quarter of 2010, for which an approval date is not predictable. At September 30, 2010, the remaining cost to reach FDA approval for this device is estimated at approximately $1.2 million to $1.7 million, depending on when FDA approval is received.

Goodwill totaling $54.5 million represents the excess of the purchase price over the fair value of tangible and identifiable intangible assets acquired and is due primarily to increased market penetration from future products and customers and synergies expected from combining the PCM device with the Company s existing development of motion preservation systems. This acquisition was nontaxable and, as a result, there is no tax basis in goodwill.

Accordingly, none of the goodwill associated with the Cervitech acquisition is deductible for tax purposes.

For the three and nine months ended September 30, 2009, the Company s consolidated results of operations include acquisition-related expenses incurred in connection with the Cervitech acquisition of $0 and $1.2 million, respectively, which are included in sales, marketing and administrative expenses.

4 .Investment in Progentix Orthobiology, B.V.

In 2009, the Company completed the purchase of forty percent (40%) of the capital stock of Progentix, a company organized under the laws of the Netherlands, from existing shareholders (the Progentix Shareholders) pursuant to a Preferred Stock Purchase Agreement for $10 million in cash (the Initial Investment). Concurrent with the Initial Investment, NuVasive and Progentix also entered into a Senior Secured Facility Agreement, whereby Progentix may borrow up to $5 million from NuVasive to fund ongoing clinical and regulatory efforts (the Loan). The proceeds of the Loan are to be utilized towards achievement of all milestones, as defined in the Preferred Stock Purchase Agreement. The Loan accrues interest at a rate of six percent (6%) per year. Other than its obligations under the Loan Agreement, NuVasive is not obligated to provide additional funding to Progentix. At September 30, 2010, the Company had advanced Progentix the full $5 million in accordance with the Loan Agreement. The Company has not provided additional financing to Progentix other than this contractually required amount.

Also concurrent with the Preferred Stock Purchase Agreement, NuVasive, Progentix and the Progentix Shareholders entered into an Option Purchase Agreement dated January 13, 2009, as amended on December 30, 2009 (the Option Agreement), whereby NuVasive may be obligated (the Put Option), upon the achievement within a specified period of time of certain milestones by Progentix, to purchase the remaining sixty percent (60%) of capital stock of Progentix from its shareholders for an amount up to $45 million, payable in a combination of cash or NuVasive common stock, at NuVasive s sole discretion, subject to certain adjustments (the Remaining Shares).

NuVasive may also be obligated, in the event that Progentix achieves the milestones specified in the agreements and completes additional milestones and NuVasive achieves specified sales targets, within a specified time period, to make additional payments to the Progentix Shareholders, excluding NuVasive, of up to an aggregate total of $25 million, payable in a combination of cash and NuVasive common stock, at NuVasive s sole discretion, subject to certain adjustments. NuVasive also has the right under the Option Agreement, as amended, to purchase the Remaining Shares (the Call Option) during a stated period of time of the Option Agreement (the Option Period) for an amount up to $35 million, payable in a combination of cash and NuVasive common stock, at the Company s sole discretion, subject to certain adjustments. In the event NuVasive achieves in excess of a specified annual sales run rate on Progentix products during the Option Period, NuVasive may be required to purchase the Remaining Shares for an amount up to $35 million. NuVasive and Progentix also entered into a Distribution Agreement, as amended, whereby Progentix appointed NuVasive as its exclusive distributor for certain Progentix products. The Distribution Agreement will be in effect for a term of ten years unless terminated earlier in accordance with its terms.

In accordance with revised authoritative guidance issued by the FASB, the Company has determined that Progentix is a variable interest entity (VIE) as it does not have the ability to finance its activities without additional subordinated financial support and its equity investors will not absorb their proportionate share of expected losses and will be limited in the receipt of the potential residual returns of Progentix. Additionally, pursuant to this guidance, NuVasive is considered its primary beneficiary as NuVasive has both (1) the power to direct the economically significant activities of Progentix and (2) the obligation to absorb losses of, or the right to receive benefits from, Progentix. Accordingly, the financial position and results of operations of Progentix have been included in the consolidated financial statements from the date of the Initial Investment. The liabilities recognized as a result of consolidating Progentix do not represent additional claims on the Company s general assets. The creditors of Progentix have claims only on the assets of Progentix, which are not material, and the assets of Progentix are not available to NuVasive.

Pursuant to authoritative guidance, the equity interests in Progentix not owned by the Company, which includes shares of both common and preferred stock, are reported as noncontrolling interests on the consolidated balance sheet of the Company. The preferred stock represents 18% of the noncontrolling equity interests and provides for a cumulative 8% dividend, if and when declared by Progentix s Board of Directors. As the rights and conversion features of the preferred stock are substantially the same as those of the common stock, the preferred stock is classified as noncontrolling interest and shares in the allocation of the losses incurred by Progentix. Losses incurred by Progentix are charged to the Company and to the noncontrolling interest holders based on their ownership percentage. The Remaining Shares and the Option Agreement that was entered into between NuVasive, Progentix and the Progentix Shareholders are not considered to be freestanding financial instruments as defined by authoritative guidance. Therefore the Remaining Shares and the Option Agreement are accounted for as a combined unit on the consolidated

financial statements as a noncontrolling interest that was initially recorded at fair value and classified as mezzanine equity.

Table of Contents

Pursuant to authoritative guidance, when the embedded Put Option is exercisable and therefore the Remaining Shares considered currently redeemable (i.e., at the option of the holder), the instrument will be adjusted to its maximum redemption amount. If the embedded Put Option is considered not currently exercisable (e.g., because a contingency has not been met), and it is not probable that the embedded Put Option will become exercisable, an adjustment is not necessary until it is probable that the embedded Put Option will become exercisable. At September 30, 2010, the embedded Put Option was not deemed currently exercisable and therefore the Remaining Shares were not redeemable because the milestones referred to previously had not been met. Furthermore, at September 30, 2010, the Company concluded it is not probable that the milestones will be met, therefore the Remaining Shares are not expected to become redeemable. The probability of redemption is reevaluated at each reporting period. Total assets and liabilities of Progentix as of September 30, 2010 included in the accompanying consolidated balance sheet are as follows *(in thousands):*

Total current assets	$ 1,217
Identifiable intangible assets, net	15,933
Goodwill	12,654
Accounts payable & accrued expenses	505
Other long-term liabilities	253
Deferred tax liabilities	3,322
Noncontrolling interests	12,276

The following is a reconciliation of equity (net assets) attributable to the noncontrolling interests (*in thousands*):

Noncontrolling interests at December 31, 2009	$ 13,629
Net loss attributable to the noncontrolling interests	1,353
Noncontrolling interests at September 30, 2010	$ 12,276

5. Balance Sheet Reserves

The balances of the reserves for accounts receivable and inventory are as follows *(in thousands)*:

	September 30, 2010	**December 31, 2009**
Reserves for accounts receivable and sales returns	$ 2,965	$ 4,163
Reserves for excess and obsolete inventory	5,634	5,075

The Company s inventory consists primarily of finished goods, disposables and specialized implants. Inventory consists primarily of purchased finished goods, which includes specialized implants and disposables, and is stated at the lower of cost or market determined by a weighted average cost method. The Company reviews the components of its inventory on a periodic basis for excess, obsolete or impaired inventory, and records a reserve for the identified items.

6. Marketable Securities and Fair Value Measurements

Marketable securities consist of corporate debt securities, U.S. government treasury securities and government sponsored entities. The Company classifies all securities as available-for-sale, as the sale of such securities may be required prior to maturity to implement management strategies. These securities are carried at fair value, with the unrealized gains and losses reported as a component of other comprehensive income (loss) in stockholder s equity until realized. A decline in the market value of any marketable security below cost that is determined to be other-than-temporary will result in a revaluation of its carrying amount to fair value. The impairment is charged to earnings and a new cost basis for the security is established. No such impairment charges were recorded for any period presented.

Realized gains and losses from the sale of marketable securities, if any, are determined on a specific identification basis. Realized gains and losses and declines in value judged to be other-than-temporary, if any, on available-for-sale securities are included in other income or expense on the consolidated statements of operations. Realized gains and losses during the periods presented were immaterial. Premiums and discounts are amortized or accreted over the life of the related security as an adjustment to yield using the straight-line method and are included in interest income on the consolidated statements of operations. Interest and dividends on securities classified as available-for-sale are included in interest income on the consolidated statements of operations.

Table of Contents

The composition of marketable securities is as follows (*in thousands*):

	Contractual Maturity (in Years)	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
September 30, 2010:					
Classified as current assets:					
U.S. government treasury securities	Less than 1	$ 22,022	$ 22	$	$ 22,044
Securities of government-sponsored entities	Less than 1	76,293	47	(3)	76,337
Corporate notes	Less than 1	6,518	4		6,522
Certificates of deposit	Less than 1	1,643			1,643
Short-term marketable securities		106,476	73	(3)	106,546
Classified as non-current assets:					
Securities of government-sponsored entities	1 to 2	36,514	24	(2)	36,536
Corporate notes	1 to 2	3,092	1		3,093
Total marketable securities at September 30, 2010		$146,082	$ 98	$ (5)	$146,175

	Contractual Maturity (in Years)	Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
December 31, 2009:					
Classified as current assets:					
Certificates of deposit	Less than 1	$ 1,979	$	$ (6)	$ 1,973
Corporate notes	Less than 1	4,955	4		4,959
U.S. government treasury securities	Less than 1	27,963	24	(4)	27,983
Securities of government-sponsored entities	Less than 1	64,317	67	(20)	64,364
Short-term marketable securities		99,214	95	(30)	99,279
Classified as non-current assets:					
Securities of government-sponsored entities	1 to 2	40,026	8	(66)	39,968
Total marketable securities at December 31, 2009		$139,240	$ 103	$ (96)	$139,247

As of September 30, 2010, the Company had no investments that were in a significant unrealized loss position. The Company reviews its investments to identify and evaluate investments that have an indication of possible other-than-temporary impairment. Factors considered in determining whether a loss is other-than-temporary include the length of time and extent to which fair value has been less than the cost basis, the financial condition and near-term prospects of the investee, and the Company s intent and ability to hold the investment for a period of time sufficient to allow for any anticipated recovery in market value. The Company maintains an investment portfolio of various holdings, types and maturities. The Company does not hold derivative financial instruments. The Company

places its cash investments in instruments that meet high credit quality standards, as specified in its investment policy guidelines. These guidelines also limit the amount of credit exposure to any one issue, issuer or type of instrument.

The Company measures certain assets and liabilities in accordance with authoritative guidance which requires fair value measurements be classified and disclosed in one of the following three categories:

Level 1: Quoted prices (unadjusted) in active markets that are accessible at the measurement date for assets or liabilities.

Level 2: Observable prices that are based on inputs not quoted on active markets, but corroborated by market data.

Level 3: Unobservable inputs are used when little or no market data is available.

Assets and liabilities are classified based on the lowest level of input that is significant to the fair value measurements. The Company reviews the fair value hierarchy classification on a quarterly basis. Changes in the ability to observe valuation inputs may result in a reclassification of levels for certain securities within the fair value hierarchy. The Company did not have any significant transfers of assets and liabilities between Level 1 and Level 2 and no transfers to or from Level 3 of the fair value measurement hierarchy during the nine months ended September 30, 2010.

Table of Contents

The fair values of the Company s assets and liabilities at September 30, 2010, which are measured at fair value on a recurring basis, were determined using the following inputs (*in thousands*):

	Total	Quoted Price in Active Market (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Marketable Securities:				
U.S. government treasury securities	$ 22,044	$ 22,044	$	$
Securities of government-sponsored entities	112,873	110,871	2,002	
Corporate notes	9,615	9,615		
Certificates of deposit	1,643	1,643		
Total marketable securities at September 30, 2010	$146,175	$ 144,173	$ 2,002	$
Contingent Consideration:				
Long-term acquisition related liabilities	$ (31,264)	$	$	$ (31,264)

The fair and carrying value of the Company s Senior Convertible Notes is discussed in Note 8.

Contingent Consideration

In connection with the acquisition of Cervitech in May 2009, the Company is required to pay an additional amount not to exceed $33 million in the event that the PCM® cervical total disc replacement device receives FDA approval. The fair value of the contingent consideration is determined using a probability-weighted discounted cash flow model, the significant inputs which are not observable in the market. The key assumptions in applying this approach are the interest rate, the timing of expected approval and the probability assigned to the milestone being achieved. Based on the expected timing of the milestone being achieved, the estimated fair value of the contingent consideration increased to $31.3 million at September 30, 2010, resulting in a charge to sales, marketing and administrative expense during the three and nine months ended September 30, 2010 totaling $0.4 million and $0.6 million, respectively.

The following table sets forth the change in the estimated fair value for the Company s liability measured using significant unobservable inputs (level 3) for the three and nine months ended September 30, 2010 (*in thousands*):

	Three Months Ended September 30, 2010	Nine Months Ended September 30, 2010
Fair Value Measurement at the beginning of the period	$ 30,876	$ 30,694
Change in fair value measurement included in operating expenses	388	570
Fair Value Measurement at September 30, 2010	$ 31,264	$ 31,264

7. Goodwill and Intangible Assets

Goodwill and identifiable intangible assets consisted of the following at September 30, 2010 *(in thousands)*:

Weighted-Averaged	Gross

	Amortization (in years)	Carrying Amount	Accumulated Amortization	Intangible Assets, net
Intangible Assets Subject to Amortization:				
Purchased technology:				
Developed technology	15	$ 31,975	$ (7,348)	$ 24,627
Manufacturing know-how and trade secrets	12	22,589	(3,730)	18,859
Trade name and trademarks	13	6,100	(843)	5,257
Customer relationships	14	9,730	(2,803)	6,927
		$ 70,394	$ (14,724)	$ 55,670
Intangible Assets Not Subject to Amortization:				
In-process research and development				46,000
Goodwill				101,938
Total Intangible Assets, net				$ 203,608

Goodwill and identifiable intangible assets consisted of the following at December 31, 2009 consisted of the following *(in thousands):*

	Weighted-Average Amortization (in years)	Gross Carrying Amount	Accumulated Amortization	Intangible Assets, net
Intangible Assets Subject to Amortization:				
Purchased technology:				
Developed technology	15	$ 31,975	$ (5,548)	$ 26,427
Manufacturing know-how and trade secrets	13	20,408	(2,394)	18,014
Trade name and trademarks	14	5,900	(520)	5,380
Customer relationships	14	9,730	(2,213)	7,517
		$ 68,013	$ (10,675)	$ 57,338
Intangible Assets Not Subject to Amortization:				
In-process research and development				46,000
Goodwill				101,938
Total Intangible Assets, net				$ 205,276

Future estimated amortization expense related to acquired intangible assets subject to amortization is as follows *(in thousands)*:

Remaining 2010	$ 1,383
2011	5,356
2012	5,334
2013	5,328
2014	5,292
2015	4,986
Thereafter	27,991
	$ 55,670

Amortization expense was $1.3 million and $1.4 million for the three months ended September 30, 2010 and 2009, respectively, and $4.0 million and $4.1 million for the nine months ended September 30, 2010 and 2009, respectively. In-process research and development will be amortized beginning on the approval date of the respective acquired products and will be amortized over the estimated useful life determined at that time. Through September 30, 2010 no amortization expense has been recorded for IPR&D.

8. Convertible Senior Notes

In March 2008, the Company issued $230.0 million principal amount of 2.25% Convertible Senior Notes (the Notes), which includes the subsequent exercise of the initial purchasers option to purchase an additional $30.0 million aggregate principal amount of the Notes. The net proceeds from the offering, after deducting the initial purchasers discount and costs directly related to the offering, were approximately $208.4 million. The Company pays 2.25% interest per annum on the principal amount of the Notes, payable semi-annually in arrears in cash on March 15 and September 15 of each year. Any notes not converted prior to March 15, 2013, the Maturity Date, will be paid in cash. The fair value, based on quoted market prices, of the outstanding notes at September 30, 2010 is approximately

$242.7 million.

The Notes are convertible into shares of the Company s common stock, $0.001 par value per share, based on an initial conversion rate, subject to adjustment, of 22.3515 shares per $1,000 principal amount of the Notes (which represents an initial conversion price of approximately $44.74 per share). Holders may convert their notes at their option on any day up to and including the second scheduled trading day immediately preceding the Maturity Date. If a fundamental change to the Company s business occurs, as defined in the Notes, holders of the Notes have the right to require that the Company repurchase the Notes, or a portion thereof, at the principal amount plus accrued and unpaid interest.

In connection with the offering of the Notes, the Company entered into convertible note hedge transactions (the Hedge) with the initial purchasers and/or their affiliates (the Counterparties) entitling the Company to purchase up to 5.1 million shares of the Company s common stock at an initial stock price of $44.74 per share, each of which is subject to adjustment. In addition, the

Table of Contents

Company sold to the Counterparties warrants to acquire up to 5.1 million shares of the Company s common stock (the Warrants), subject to adjustment, at an initial strike price of $49.13 per share. The cost of the Hedge that was not covered by the proceeds from the sale of the Warrants was approximately $14.0 million and was recorded as a reduction of additional paid-in capital. The impact of the Hedge is to raise the effective conversion price of the Notes to approximately $49.13 per share (or approximately 20.3542 shares per $1,000 principal amount of the Notes). The Hedge is expected to reduce the potential equity dilution upon conversion of the Notes if the daily volume-weighted average price per share of the Company s common stock exceeds the strike price of the Hedge. The Warrants could have a dilutive effect on the Company s earnings per share to the extent that the price of the Company s common stock during a given measurement period (the quarter or year to date period) exceeds the strike price of the Warrants.

9. Net Income Per Share

Basic net income per share (EPS) is calculated by dividing the net income by the weighted average number of common shares outstanding for the period, without consideration for common stock equivalents. Diluted EPS is computed by dividing net income by the weighted average number of common shares outstanding for the period and the weighted average number of dilutive common stock equivalents, such as the assumed vesting of outstanding unvested restricted stock units, options, and warrants. Common stock equivalents are only included in the calculation of diluted earnings per share when their effect is dilutive.

	Three Months Ended September 30,		**Nine Months Ended September 30,**	
(in thousands, except per share amounts)	**2010**	**2009**	**2010**	**2009**
Numerator:				
Net income attributable to NuVasive, Inc.	$ 8,542	$ 5,064	$16,353	$ 3,527
Denominator for basic and diluted net income per share:				
Weighted average common shares outstanding for basic	39,394	37,733	39,180	37,008
Dilutive potential common stock outstanding:				
Stock options, ESPP and restricted stock units	1,002	1,483	1,209	1,376
Weighted average common shares outstanding for diluted	40,396	39,216	40,389	38,384
Basic net income per share attributable to NuVasive, Inc.	$ 0.22	$ 0.13	$ 0.42	$ 0.10
Diluted net income per share attributable to NuVasive, Inc.	$ 0.21	$ 0.13	$ 0.40	$ 0.09

The following outstanding common stock equivalents were not included in the calculation of net income per diluted share because their effects were anti-dilutive:

	Three Months Ended September 30,		**Nine Months Ended September 30,**	
(in thousands)	**2010**	**2009**	**2010**	**2009**
Weighted stock options and RSUs	4,043	1,315	2,874	3,110
Warrants	5,141	5,141	5,141	5,141

Convertible senior notes	5,141	5,141	5,141	5,141
Total	14,325	11,597	13,156	13,392

14

10. Comprehensive Income

The components of comprehensive income are as follows (*in thousands*):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2010	**2009**	**2010**	**2009**
Consolidated net income	$ 8,104	$4,436	$15,000	$ 2,216
Other comprehensive income:				
Unrealized gain (loss) on investments	(10)	(41)	85	(340)
Translation adjustments	1,480	279	410	741
Total consolidated comprehensive income	9,574	4,674	15,495	2,617
Plus: Net loss attributable to noncontrolling interests	(438)	(628)	(1,353)	(1,311)
Comprehensive income attributable to NuVasive, Inc.	$10,012	$5,302	$16,848	$ 3,928

11. Stock-Based Compensation

The Company estimates the fair value of stock options granted to employees and shares issued under the Employee Stock Purchase Plan, or ESPP Plan, using a Black-Scholes option-pricing model. The weighted-average assumptions used to estimate the fair value of stock awards granted in the three and nine months ended September 30, 2010 and 2009 are as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2010	**2009**	**2010**	**2009**
Stock Options				
Volatility	N/A	46%	47%	45%
Expected term (years)	N/A	3.3	4.5	4.3
Risk free interest rate	N/A	2.5%	2.4%	1.6%
Expected dividend yield	N/A	0.0%	0.0%	0.0%
ESPP				
Volatility	55%	46%	53%	46%
Expected term (years)	1.4	1.5	1.4	1.4
Risk free interest rate	0.8%	0.1%	0.9%	0.2%
Expected dividend yield	0.0%	0.0%	0.0%	0.0%

There were no stock options granted during the three months ended September 30, 2010.

The compensation cost that has been included in the statements of operations for all stock-based compensation arrangements was as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
(in thousands)	**2010**	**2009**	**2010**	**2009**
Sales, marketing and administrative expense	$6,494	$4,265	$18,846	$14,748
Research and development expense	827	901	2,458	3,417

Total stock-based compensation expense	$7,321	$5,166	$21,304	$18,165

Stock-based compensation for stock options and restricted stock units is recognized and amortized on an accelerated basis in accordance with authoritative guidance issued by the FASB.

12. Income Taxes

The Company recorded an income tax benefit of $40,000 and an income tax expense of $0.4 million for the three months ended September 30, 2010 and 2009, respectively, and $1.4 million and $1.1 million for the nine months ended September 30, 2010 and 2009, respectively. The effective income tax rate for the nine months ended September 30, 2010 was 8.5%, which is based on an estimate of the Company s annual effective income tax rate. The Company updates its annual effective income tax rate each quarter and if the estimated effective income tax rate changes, a cumulative adjustment is made. The annual effective income tax rate for 2010

15

is expected to be lower than the U.S. federal statutory rate of 35% primarily due to the availability of net operating loss carry forwards to offset 2010 taxable income.

At September 30, 2010, the Company continues to record a full valuation allowance against its deferred tax assets, with limited exceptions for two foreign entities for which a valuation allowance has not been required.

13. Lease Abandonment Charge Reversal

In August 2008, the Company relocated its corporate headquarters to a two-building campus style complex in San Diego. In connection with this relocation, in the third quarter of 2008, the Company recorded a liability for approximately $3.9 million related to lease termination costs in connection with vacating the Company s former corporate headquarters. During the third quarter of 2009, due to continued growth, the Company decided to reoccupy the former corporate headquarters facility and accordingly, reversed the remaining lease termination costs liability of $2.0 million. This amount was recorded as a reduction of sales, marketing, and administrative expenses for the three and nine months ended September 30, 2009.

14. Segment and Product Information

The Company s business operates in one segment based upon the Company s organizational structure, the way in which the operations are managed and evaluated and the lack of availability of separate financial results. Substantially all of the Company s assets and sales are in the United States.

The Company s spine surgery product line offerings, which include products for the thoracolumbar spine, the cervical spine, and a set of motion preservation products offerings still under development, are primarily used to enable access to the spine and to perform restorative and fusion procedures in minimally disruptive spine surgeries. The Company s biologic product line offerings includes allograft (donated human tissue), FormaGraft, a collagen synthetic product used to aid the fusion process, and Osteocel, an allograft cellular matrix containing viable mesenchymal stem cells, or MSCs, to aid in spinal fusion. Revenue by product line offerings was as follows *(in thousands):*

	Three Months Ended September 30,		**Nine Months Ended September 30,**	
	2010	**2009**	**2010**	**2009**
Spine Surgery Products	$ 97,618	$78,668	$284,616	$223,113
Biologics	22,644	16,248	64,317	40,292
Total Revenue	$120,262	$94,916	$348,933	$263,405

15. Legal Proceedings

UCLA Litigation

The Company has been involved in a series of related lawsuits involving families of decedents who donated their bodies through UCLA s willed body program. The complaint alleges that the head of UCLA s willed body program, Henry G. Reid, and a third party, Ernest V. Nelson, improperly sold some of the donated cadavers to the defendants (including NuVasive). Plaintiffs alleged the following causes of action: (i) breach of fiduciary duty; (ii) negligence; (iii) fraud; (iv) negligent misrepresentation; (v) negligent infliction of emotional distress; (vi) intentional infliction of emotional distress; (vii) intentional interference with human remains; (viii) negligent interference with human remains; (ix) violation of California Business and Professions Code Section 17200; and (x) injunctive and declaratory relief. The Company was dismissed from these lawsuits by the trial court. After a series of appeals regarding this dismissal, the California Court of Appeals affirmed the Company s dismissal on April 7, 2010. The California Supreme Court recently denied Plaintiffs petition for review. As a result, the Company is fully dismissed from the lawsuits and no further appeals of this decision are possible.

Medtronic Sofamor Danek USA, Inc. Litigation

As previously disclosed, in August 2008, Medtronic Sofamor Danek USA, Inc. and its related entities (Medtronic) filed suit against NuVasive in the United States District Court for the Southern District of California (Medtronic

Litigation), alleging that

certain of NuVasive s products infringe, or contribute to the infringement of, twelve U.S. patents assigned or licensed to Medtronic. Three of the patents were later withdrawn by Medtronic, leaving nine patents. NuVasive brought counterclaims against Medtronic alleging infringement of certain of NuVasive s patents. Because of the number of patents involved, each side selected three patents to proceed with in the first phase of the litigation. Based on the granting of two reexamination requests filed by Medtronic, the Court has stayed two of NuVasive s three asserted patents, leaving three Medtronic patents and one NuVasive patent in the first phase. The Court issued its claim interpretation order interpreting the patents in the first phase on April 1, 2010, in which NuVasive prevailed on several important disputes thereby improving NuVasive s position with regard to the asserted Medtronic patents and as to the asserted NuVasive patent. The first phase of the case is presently in a discovery phase, and a trial on the four patents in the first phase is scheduled to commence on May 10, 2011. NuVasive believes its own claims have merit and that Medtronic s claims lack merit. As of September 30, 2010, the probability of a favorable outcome cannot be reasonably determined, nor can the Company reasonably estimate a potential loss, therefore, in accordance with the authoritative guidance on the evaluation of contingencies, the Company has not recorded an accrual related to this litigation.

Trademark Infringement Litigation

In September 2009, Neurovision Medical Products, Inc. (NMP) filed suit against NuVasive in the U.S. District Court for the Central District of California (Case No. 2:09-cv-06988-R-JEM) alleging trademark infringement and unfair competition. NMP sought cancellation of NuVasive s NeuroVision trademark registrations, injunctive relief and damages based on NMP s common law use of the of the Neurovision mark. On November 23, 2009, the Company denied the allegations in NMP s complaint. After trial of the matter, on October 25, 2010 an unfavorable jury verdict was delivered against the Company relating to its use of the NeuroVision name. The verdict, which NuVasive intends to immediately appeal, awarded damages to NMP of $60 million. Judgment has not yet been entered in the case, and the damages amount is subject to change at the discretion of the judge and based on additional rulings to be made in the case. NuVasive will post a supersedeas bond, in an amount yet to be determined, and any payment of damages will be delayed while the appeals process runs its course, which could take up to 2 years. The Company continues to believe that the verdict is not supported by the facts or by applicable law and we are in the process of filing post-trial motions to redress errors made during the trial. The Company, based on its own assessment as well as that of outside counsel, believes that the trial court committed a number of prejudicial legal errors and that these errors were significant, making the possibility of reversal of the judgment on appeal and/or a new trial probable. Accordingly, at September 30, 2010, in accordance with the authoritative guidance on the evaluation of contingencies, the Company has not recorded an accrual related to this litigation. The Company may be required to record an expense related to this damage award in the future.

Item 2. Management s Discussion and Analysis of Financial Condition and Results of Operations
Forward-Looking Statements May Prove Inaccurate

You should read the following discussion of our financial condition and results of operations in conjunction with the unaudited condensed consolidated financial statements and the notes to those statements included in this report. This discussion may contain forward-looking statements that involve risks and uncertainties. Our actual results may differ materially from those anticipated in these forward-looking statements as a result of certain factors, such as those set forth under heading Risk Factors, and elsewhere in this report, and similar discussions in our other Securities and Exchange Commission filings, including our Annual Report on Form 10-K, as amended, for the year ended December 31, 2009. We do not intend to update these forward looking statements to reflect future events or circumstances.

Overview

We are a medical device company focused on the design, development and marketing of products for the surgical treatment of spine disorders. Our currently-marketed product portfolio is focused on applications for spine fusion surgery, a market estimated to exceed $5.1 billion in the United States in 2010. Our principal product offering includes a minimally disruptive surgical platform called Maximum Access Surgery, or MAS®, as well as a growing offering of biologics, cervical and motion preservation products. Our spine surgery product line offerings, which include products for the thoracolumbar spine, the cervical spine, and a set of motion preservation products offerings still under development, are primarily used to enable access to the spine and to perform restorative and fusion procedures in minimally disruptive spine surgeries. Our biologic product line offerings include allograft (donated human tissue), FormaGraft, a collagen synthetic product used to aid the fusion process, and Osteocel, an allograft cellular matrix containing viable mesenchymal stem cells, or MSCs, to aid in spinal fusion.

We focus significant research and development efforts to expand our MAS product platform, advance the applications of our unique technology to additional procedures and develop motion preserving products such as our total disc replacement products. We dedicate significant resources to our sales and marketing efforts, including training spine surgeons on our unique technology and products. Currently, we are training approximately 400 to 500 surgeons annually, which includes surgeons new to our MAS product platform as well as surgeons previously trained on our MAS product platform who are attending advanced training programs.

Our MAS platform, with the unique advantages provided by NeuroVision, enables an innovative lateral procedure known as eXtreme Lateral Interbody Fusion, or XLIF®, in which surgeons access the spine for a fusion procedure from the side of the patient s body, rather than from the front or back. Our MaXcess instruments provide access to the spine in a manner that affords direct visibility and our NeuroVision system allows surgeons to detect and avoid critical nerves. Certain insurance providers have stated a policy of not providing reimbursement for the XLIF procedure. NuVasive cannot offer definitive time frames nor final outcomes regarding reversal of the non-coverage policies, as the process is dictated by third-party insurance providers. To date, we have not experienced significant lack of payment for our procedures based on these policies. On February 26, 2010, Aetna and United Healthcare changed their spinal surgery policy to include coverage for the eXtreme Lateral Interbody Fusion, or XLIF procedure, a reversal from their previous policy that labeled XLIF as experimental and investigational or unproven.

In recent years, we have significantly expanded our product offering relating to procedures in the cervical spine as well as in the area of biologics. Our cervical product offering now provides a full set of solutions for cervical fusion surgery, including both allograft and CoRoent implants, as well as cervical plating and posterior fixation products. In 2009, we acquired Cervitech®, Inc. (Cervitech), a company focused on clinical approval of the PCM® cervical disc system, a motion preserving total disc replacement device. This strategic acquisition allows us the potential to accelerate our entry into the growing mechanical cervical disc replacement market. In the first quarter of 2010, we submitted a premarket approval (PMA) application for U.S. Food and Drug Administration (FDA) approval for the PCM cervical disc system. Approval, if obtained, will further strengthen our cervical product offering and will enable us to continue our trend of increasing our market share.

In 2009 we purchased forty percent (40%) of the capital stock of Progentix Orthobiology, B.V. (Progentix), a company organized under the laws of the Netherlands, from existing shareholders for $10.0 million in cash. Progentix is studying the development and exploitation of knowledge and products in the field of bone defects and the recovery

of bone tissue in general. Progentix seeks to further extend its existing knowledge and patent position in the field of Osteoinductive Bone Graft Material Technology.

We have an active product development pipeline focused on expanding our current fusion product platform as well as products designed to preserve spinal motion.

The majority of our revenues are derived from the sale of disposables and implants and we expect this trend to continue for the foreseeable future. We loan our NeuroVision systems and surgical instrument sets at no cost to surgeons and hospitals that purchase disposables and implants for use in individual procedures. In addition, we place NeuroVision, MaXcess and other MAS or cervical surgical instrument sets with hospitals for an extended period at no up-front cost to them. Our implants and disposables are currently sold and shipped from our primary distribution and warehousing operations facility located in Memphis, Tennessee. We recognize revenue for disposables or implants used upon receiving acknowledgement of a purchase order from the hospital indicating product use or implantation. In addition, we sell an immaterial number of MAS instrument sets, MaXcess devices, and NeuroVision systems. To date, we have derived less than 5% of our total revenues from these sales.

Through September 30, 2010, substantially all of our operations are located in the United States and substantially all of our sales have been generated in the United States. We sell our products through a sales force comprised of exclusive independent sales agents and our own directly employed sales professionals; both selling only NuVasive spine surgery products. Our sales force provides a delivery and consultative service to our surgeon and hospital customers and is compensated based on sales and product placements in their territories. Sales force commissions are reflected in our statement of operations in the sales, marketing and administrative expense line. We expect to continue to expand our distribution channel. Beginning late in 2007 and continuing today, we are expanding our international sales efforts with the focus on both European and Asian markets. We expect our international sales force to continue to be made up of a combination of distributors and direct sales personnel.

Results of Operations

Revenue

	September 30,			
(dollars in thousands)	**2010**	**2009**	**$ Change**	**% Change**
Three months ended:				
Spine Surgery Products	$ 97,618	$ 78,668		
Biologics	22,644	16,248		
Total Revenue	$120,262	$ 94,916	$25,346	26.7%
Nine months ended:				
Spine Surgery Products	$284,616	$223,113		
Biologics	64,317	40,292		
Total Revenue	$348,933	$263,405	$85,528	32.5%

Our spine surgery product line offerings, which include thoracolumbar product offerings, a set of recently developed cervical offerings, and a set of motion preservation products offerings still under development, are primarily used to enable access to the spine and to perform restorative and fusion procedures in minimally disruptive spine surgeries. Our biologic product line offerings include allograft (donated human tissue), FormaGraft, a collagen synthetic product used to aid the fusion process, and Osteocel, an allograft cellular matrix containing viable mesenchymal stem cells, or MSCs, to aid in spinal fusion.

The continued adoption of minimally invasive procedures for spine has led to the continued expansion of our innovative lateral procedure known as eXtreme Lateral Interbody Fusion, or XLIF®, in which surgeons access the spine for a fusion procedure from the side of the patient s body, rather than from the front or back. The execution of our strategy of expanding our product offering for the lumbar region and addressing broader indications further up the spine in the thoracic and cervical regions has contributed to strong revenue growth. In addition, increased market

acceptance in our international markets contributed to the increase in revenues noted for the periods presented. We expect the continued adoption of our XLIF procedure and deeper penetration into existing accounts and our newer international markets as our sales force executes on the strategy of selling the full mix of our products; however, recent changes in payer and hospital behavior in the U.S. have created less predictability in the spine market and impacted the spine markets growth rate.

Our total revenues increased $25.3 million and $85.5 million in the three and nine months ended September 30, 2010, respectively, representing total revenue growth of 26.7% and 32.5% for the three and nine months ended September 30, 2010, respectively, compared to the same periods in 2009. Total revenue for the three and nine months ended September 30, 2010 grew by approximately

28.1% and 33.8%, respectively, as compared to the same periods in 2009 as a result of favorable product volume/mix. This increase was partially offset by slight unfavorable changes in price of 1.4% and 1.3% for the three and nine months ended September 30, 2010, respectively, as compared to the same periods in 2009.

Cost of Goods Sold, excluding amortization of purchased technology

	September 30,			
(dollars in thousands)	**2010**	**2009**	**$ Change**	**% Change**
Three months ended:	$21,580	$15,874	$ 5,706	35.9%
% of revenue	17.9%	16.7%		
Nine months ended:	$62,037	$43,108	$18,929	43.9%
% of revenue	17.8%	16.4%		

Cost of goods sold consists of purchased goods, inventory-related costs and royalty expenses.

The increase in cost of goods sold as a percentage of revenue for the three and nine months ended September 30, 2010 compared to the same periods in 2009 resulted primarily from the greater contribution to revenue from our lower margin biologic product line, lower margin international businesses and mix shifting within the remainder of the domestic product portfolio. We expect cost of goods sold, as a percentage of revenue, to increase slightly to approximately 18% for the remainder of 2010 due to the expected continued increased revenue contribution from our lower margin biologic product lines and international businesses.

Operating Expenses

Sales, Marketing and Administrative

	September 30,			
(dollars in thousands)	**2010**	**2009**	**$ Change**	**% Change**
Three months ended:	$ 77,717	$ 61,720	$15,997	25.9%
% of revenue	64.6%	65.0%		
Nine months ended:	$230,104	$182,521	$47,583	26.1%
% of revenue	65.9%	69.3%		

Sales, marketing and administrative expenses consist primarily of compensation, commission and training costs for personnel engaged in sales, marketing and customer support functions; distributor commissions; depreciation expense for loaned instrument sets used in surgeries; shipping costs; surgeon training costs; shareowner (employee) related expenses for our administrative functions; and third-party professional service fees.

The increases in sales, marketing and administrative expenses principally result from growth in our revenue and the overall growth of the Company, including expenses that fluctuate with sales and expenses associated with investments in our infrastructure and headcount growth. As a percentage of revenue, sales, marketing and administrative expenses decreased for the three and nine months ended September 30, 2010 compared to the same periods in 2009 principally from operating leverage in our expenses, as well as lower estimates for performance based compensation, relative to the 26.7% and 32.5% growth in revenue for the three and nine months ended September 30, 2010, respectively.

Costs that tend to vary based on revenue, such as sales force compensation and other direct costs related to the sales force, shipping costs and depreciation expense related to our surgical instrument sets increased $9.4 million and $32.6 million for the three and nine months ended September 30, 2010, respectively, compared to the same periods in 2009. The increases are reasonably consistent with our increased revenue growth for the three and nine months ended September 30, 2010 as compared to the same periods in 2009. Total costs related to our sales force, as a percent of revenue, decreased slightly to 28.7% from 28.8% for the three months ended September 30, 2010 compared to the same period in 2009.

Compensation and other shareowner related expenses for our marketing and administrative support functions decreased $1.8 million for the three months ended September 30, 2010 compared to the same period in 2009 as

increased compensation and other shareowner related expenses resulting from additions to the Company s headcount were more than offset by a decrease in performance based compensation estimates. Compensation and other shareowner related expenses for our marketing and administrative support functions increased $3.7 million for the nine months ended September 30, 2010 compared to the same period in 2009 as a result of overall Company growth and headcount additions in our marketing and administrative support functions, partially offset by a decrease in performance based compensation estimates. Stock-

---

Table of Contents

based compensation increased $2.2 million and $4.1 million in the three and nine months ended September 30, 2010, respectively, compared to the same periods in 2009 primarily related to an increase in stock-based awards granted to shareowners (employees) associated with the continued increase in headcount. These increases in expenses are partially offset by decreases of approximately $0.3 million and $2.6 million in acquisition-related costs during the three and nine months ended September 30, 2010, respectively, compared to the same periods in 2009, attributable to expenses incurred in connection with our investment in Progentix and acquisition of Cervitech in the three and nine months ended September 30, 2009 with no comparable expense during the same periods in 2010.

In addition to the items discussed above, legal expenses increased $2.2 million and $4.0 million for the three and nine months ended September 30, 2010, respectively, compared to the same periods in 2009, resulting primarily from increased non-Medtronic related litigation and legal activity including recently announced offensive actions to protect our intellectual property. These increased expenses were partially offset by the recovery of an international receivable in the amount of $1.5 million in the nine months ended September 30, 2010 which had previously been reserved for in the first half of 2009.

In connection with the relocation of our corporate headquarters in August 2008, we recorded a charge of approximately $4.8 million to sales, marketing, and administrative expenses for lease termination costs and other related items. During the third quarter of 2009, due to continued growth, we decided to reoccupy the former corporate headquarters facility. Accordingly, in 2009, the remaining liability related to lease termination costs of $2.0 million was reversed and is recorded as a reduction of sales, marketing, and administrative expenses for the three and nine months ended September 30, 2009.

On a long-term basis, dependent on revenue growth, we expect total sales, marketing and administrative costs, as a percentage of revenue, to continue to decrease over time.

Research and Development

	September 30,			
(dollars in thousands)	**2010**	**2009**	**$ Change**	**% Change**
Three months ended:	$10,085	$ 9,874	$ 211	2.1%
% of revenue	8.4%	10.4%		
Nine months ended:	$31,989	$26,638	$5,351	20.1%
% of revenue	9.2%	10.1%		

Research and development expense consists primarily of product research and development, clinical trial and study costs, regulatory and clinical functions, and shareowner (employee) related expenses.

Compensation and other shareowner related expenses decreased $0.3 million for the three months ended September 30, 2010 as increased compensation and other shareowner related expenses resulting from additions to the Company s headcount were more than offset by a decrease in performance based compensation estimates for the three months ended September 30, 2010 as compared to the same period in 2009. Compensation and other shareowner related expenses increased $1.7 million for the nine months ended September 30, 2010 primarily due to increased headcount to support our product development and enhancement efforts, as compared to the same period in 2009. In addition, expenses related to ongoing clinical trial and study related activities designed to demonstrate the value of our emerging and existing technologies increased $0.5 million and $1.8 million for the three and nine months ended September 30, 2010, respectively, compared to the same periods in 2009. In addition, expenses increased $0.3 million and $1.0 million in the three and nine months ended September 30, 2010 as compared to 2009 as a result of expenses incurred in connection with a supply agreement related to the bone graft product being developed by Progentix. We expect research and development costs to increase in absolute dollars for the foreseeable future in support of our ongoing development and planned clinical trial and study related activities.

Table of Contents

Amortization of Intangible Assets

	September 30,			
(dollars in thousands)	2010	2009	$ Change	% Change
Three months ended:	$1,342	$1,364	$(22)	(1.6)%
% of total revenue	1.1%	1.4%		
Nine months ended:	$4,047	$4,072	$(25)	(0.6)%
% of total revenue	1.2%	1.5%		

Amortization of intangible assets relates to amortization of finite-lived intangible assets acquired. Although amortization expense for the three and nine months ended September 30, 2010 compared to the same periods in 2009 decreased slightly, we expect expenses recorded in connection with the amortization of intangible assets to increase in absolute dollars as amortization of acquired in-process research and development commences once acquired research and development projects reach technological feasibility.

Interest and Other Income, Net

	September 30,			
(dollars in thousands)	2010	2009	$ Change	% Change
Three months ended:				
Interest income	$ 200	$ 203		
Interest expense	(1,668)	(1,609)		
Other income (expense), net	(6)	188		
Total interest and other income (expense), net	$(1,474)	$(1,218)	$(256)	21.0%
% of revenue	1.2%	1.3%		
Nine months ended:				
Interest income	$ 567	$ 1,318		
Interest expense	(5,005)	(5,439)		
Other income, net	81	324		
Total interest and other income (expense), net	$(4,357)	$(3,797)	$(560)	14.7%
% of revenue	1.2%	1.4%		

Interest and other income (expense), net, consists primarily of interest income earned on marketable securities offset by interest expense incurred related to the Company s outstanding convertible senior notes. The net change in interest and other income (expense), net, in the three months ended September 30, 2010 as compared to the same period in 2009 is immaterial. The net change in interest and other income (expense), net, in the nine months ended September 30, 2010 as compared to the same period in 2009 is principally due to a decrease of $0.8 million in interest income earned in the nine months ended September 30, 2010, resulting principally from lower interest rates in 2010 as compared to the same period in 2009.

Income Tax Expense

	September 30,			
(dollars in thousands)	2010	2009	$ Change	% Change
Three months ended:	$ (40)	$ 430	$(470)	(109.3)%
% of total revenue	0.0%	0.5%		
Nine months ended:	$1,399	$1,053	$ 346	32.9%

% of total revenue	0.4%	0.4%

Our effective income tax rate will fluctuate from period to period due to several factors including the operating results of our international operations. We update our annual effective income tax rate each quarter and if the estimated effective income tax rate changes, a cumulative adjustment is made. The effective income tax rate for the nine months ended September 30, 2010 was 8.5%, which is based on an estimate of the Company s annual effective income tax rate, and is lower than the U.S. federal statutory rate of 35% primarily due to the availability of net operating loss carry forwards to offset 2010 taxable income.

22

Table of Contents

Stock-Based Compensation

	September 30,			
(dollars in thousands)	**2010**	**2009**	**$ Change**	**% Change**
Three months ended:				
Sales, marketing and administrative expense	$ 6,494	$ 4,265		
Research and development expense	827	901		
Total stock-based compensation expense	$ 7,321	$ 5,166	$ 2,155	41.7%
% of revenue	6.1%	5.4%		
Nine months ended:				
Sales, marketing and administrative expense	$ 18,846	$ 14,748		
Research and development expense	2,458	3,417		
Total stock-based compensation expense	$ 21,304	$ 18,165	$ 3,139	17.3%
% of revenue	6.1%	6.9%		

We recognize stock-based compensation expense on an accelerated basis in accordance with authoritative guidance, which effectively results in the recognition of approximately 60% of the total compensation expense for a particular equity award within 12 months of its grant date. The increase in stock-based compensation in the periods presented is primarily related to an increase in stock-based awards granted to shareowners associated with the continued increase in headcount during the three and nine months ended September 30, 2010, offset by a change in the estimate of the number of options expected to vest as a result of the resignation of one of our executive officers during the three and nine months ended September 30, 2009, resulting in lower stock-based compensation expense in the prior periods.

Liquidity, Cash Flows and Capital Resources

Since our inception in 1997, we have incurred significant losses and as of September 30, 2010, we had an accumulated deficit of approximately $173.3 million. To date, our operations have been funded primarily with proceeds from the sale of our securities. However, as a result of increased sales and profitability, we have begun to generate cash flows from operations, which will be used to finance our operating and capital expenditures.

In March 2008, we issued $230.0 million principal amount of 2.25% Convertible Senior Notes due 2013 (the Notes). The net proceeds from the offering, after deducting the initial purchasers discount and costs directly related to the offering, were approximately $208.4 million. We pay 2.25% interest per annum on the principal amount of the Notes, payable semi-annually in arrears in cash on March 15 and September 15 of each year. Any notes not converted prior to March 15, 2013, the maturity date, will be paid in cash.

Cash, cash equivalents and short-term and long-term marketable securities, was $216.8 million at September 30, 2010 and $204.7 million at December 31, 2009.

Cash Flows

The following table summarizes, for the periods indicated, selected items in our consolidated statements of cash flows:

	Nine Months Ended September 30,		
(dollars in thousands)	**2010**	**2009**	**$ Change**
Cash provided by operating activities	$ 43,922	$ 32,866	$11,056
Cash used in investing activities	(45,013)	(40,611)	(4,402)
Cash provided by financing activities	6,164	9,618	(3,454)

Effect of exchange rate changes on cash	104	85	19
Increase in cash and cash equivalents	$ 5,177	$ 1,958	$ 3,219

Cash flows from operating activities

Cash provided by operating activities was $43.9 million for the nine months ended September 30, 2010, compared to $32.9 million for the same period in 2009. The $11.1 million increase in cash provided by operating activities in the nine months ended September 30, 2010 as compared to the same period in 2009 is primarily due to improvement in our profitability profile, an increase in non-cash expenses of depreciation, amortization and stock-based compensation, and improvement in our working capital where tighter inventory management partially offsets the growth in accounts receivable caused by our growing revenue base.

Cash flows used in investing activities

Cash used in investing activities was $45.0 million for the nine months ended September 30, 2010, compared to $40.6 million for the same period in 2009. The $4.4 million increase in cash used in investing activities in the nine months ended September 30, 2010 as compared to the same period in 2009 is primarily due to increased investing in available-for-sale securities, as well as increased purchases of surgical instrument sets, which are deployed to support our increasing revenue volume, and increased expenditures in infrastructure related to the addition of our New York facility and expansion of our Memphis facility. These increases in spending were offset by a decrease in cash used for acquisitions and investments in 2010 compared to 2009 as the acquisition of Cervitech, Inc. and our investment in Progentix were completed in 2009 with no comparable investments in 2010.

Cash flows from financing activities

Cash provided by financing activities was $6.2 million for the nine months ended September 30, 2010, compared to $9.6 million for the same period in 2009. The $3.5 million decrease in cash provided by financing activities for the nine months ended September 30, 2010 as compared to the same period in 2009 is primarily due to increased proceeds from stock option exercises and purchases made through our Employee Stock Purchase Plan, partially offset by an increase in cash used for long-term other assets (primarily cash used as collateral for letters of credit).

Liquidity

We expect that cash provided by operating activities may fluctuate in future periods as a result of a number of factors, including fluctuations in our operating results and working capital requirements.

We believe that our existing cash, cash equivalents and short-term marketable securities will be sufficient to meet our anticipated cash needs for at least the next 12 months. Our future capital requirements will depend on many factors including our rate of revenue growth, the timing and extent of spending to support development efforts, the expansion of sales and marketing activities, the timing of introductions of new products and enhancements to existing products, the continuing market acceptance of our products and the expenditures associated with possible future acquisitions or other business combination transactions.

Critical Accounting Policies and Estimates

Our discussion and analysis of our financial condition and results of operations is based upon our unaudited condensed consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States (GAAP). The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses. On an ongoing basis, we evaluate our estimates including those related to bad debts, inventories, valuation of goodwill, intangibles and other long-term assets and liabilities, income taxes, and stock-based compensation. We base our estimates on historical experience and on various other assumptions we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities not readily apparent from other sources. Actual results may differ from these estimates. Our critical accounting policies and estimates are discussed in our Annual Report on Form 10-K, as amended, for the fiscal year ended December 31, 2009 and there have been no material changes during the nine months ended September 30, 2010.

New accounting requirements

Effective January 1, 2010, we adopted a newly issued accounting standard which provides guidance for the consolidation of variable interest entities and requires an enterprise to determine whether its variable interest or interests give it a controlling financial

interest in a variable interest entity. This amended consolidation guidance for variable interest entities replaces the existing quantitative approach for identifying which enterprise should consolidate a variable interest entity, which was based on which enterprise is exposed to a majority of the risks and rewards, with a qualitative approach, based on which enterprise has both (1) the power to direct the economically significant activities of the entity and (2) the obligation to absorb losses of, or the right to receive benefits from, the entity that could potentially be significant to the variable interest entity. The adoption of this standard did not have an impact on our financial position or results of operations. Determination about whether an enterprise should consolidate a variable interest entity is required to be evaluated continuously as changes to existing relationships or future transactions may result in our consolidating or deconsolidating current or future business arrangements.

Off-Balance Sheet Arrangements

We have not engaged in any off-balance sheet activities.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Our exposure to interest rate risk at September 30, 2010 is related to our investment portfolio which consists principally of debt securities of the U.S. government and U.S government-sponsored entities. Due to the short-term nature of these investments, we have assessed that there is no material exposure to interest rate risk arising from our investments. Fixed rate investments and borrowings may have their fair market value adversely impacted from changes in interest rates.

Interest Rate Risk. Our exposure to market risk for changes in interest rates relates primarily to our investment portfolio. The fair market value of fixed rate securities may be adversely impacted by fluctuations in interest rates while income earned on floating rate securities may decline as a result of decreases in interest rates. Under our current policies, we do not use interest rate derivative instruments to manage exposure to interest rate changes. We attempt to ensure the safety and preservation of our invested principal funds by limiting default risk, market risk and reinvestment risk. We mitigate default risk by investing in investment grade securities. We have historically maintained a relatively short average maturity for our investment portfolio, and we believe a hypothetical 10% adverse move in interest rates along the entire interest rate yield curve would not materially affect the fair value of our interest sensitive financial instruments.

Foreign Currency Exchange and Market Risk. To date, we have operated mainly in the United States of America, and the majority of our sales since inception have been made in U.S. dollars. Prior to 2009, a majority of our sales to international markets were to independent distributors in transactions conducted in U.S. dollars. Beginning in 2009, our sales in international markets, primarily Puerto Rico, the United Kingdom, Germany and Australia, are through local subsidiaries which sell directly to health care providers in local currencies. As a portion of our operations consists of activities outside of the United States in local currencies we have foreign exchange exposures to non-U.S. dollar revenues, operating expenses, accounts receivable, accounts payable and currency bank balances. In addition, our international operations are subject to risks typical of international operations, including, but not limited to, differing economic conditions, changes in political climate, differing tax structures, other regulations and restrictions, and foreign exchange rate volatility. There have been no significant changes in our exposure to market risk during the nine months ended September 30, 2010, and to date, we have not had any material exposure to foreign currency rate fluctuations.

Item 4. Controls and Procedures

Disclosure Controls and Procedures. We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our reports under the Securities Exchange Act of 1934, as amended (Exchange Act), is recorded, processed, summarized and reported within the timelines specified in the SEC s rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can only provide reasonable assurance of achieving the desired control objectives, and in reaching a reasonable level of assurance management necessarily is required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

Under the supervision and with the participation of our management, including our Chief Executive Officer and our Chief Financial Officer, we carried out an evaluation of the effectiveness of the Company s disclosure controls and procedures (as such term

Table of Contents

is defined in Exchange Act Rules 13a 15(e) and 15d 15(e)) as of September 30, 2010. Based on such evaluation, our management has concluded that as of September 30, 2010, the Company s disclosure controls and procedures are effective.

Changes in Internal Control over Financial Reporting. There has been no change to our internal control over financial reporting during our most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

There have been no changes to the Legal Proceedings discussed in our Annual Report on Form 10-K, as amended, for the fiscal year ended December 31, 2009 and our Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2010, except as follows:

Trademark Infringement Litigation

In September 2009, Neurovision Medical Products, Inc. (NMP) filed suit against NuVasive in the U.S. District Court for the Central District of California (Case No. 2:09-cv-06988-R-JEM) alleging trademark infringement and unfair competition. NMP sought cancellation of NuVasive s NeuroVision trademark registrations, injunctive relief and damages based on NMP s common law use of the of the Neurovision mark. On November 23, 2009, the Company denied the allegations in NMP s complaint. After trial of the matter, on October 25, 2010 an unfavorable jury verdict was delivered against the Company relating to its use of the NeuroVision

name. The verdict, which NuVasive intends to immediately appeal, awarded damages to NMP of $60 million. Judgment has not yet been entered in the case, and the damages amount is subject to change at the discretion of the judge and based on additional rulings to be made in the case. NuVasive will post a supersedeas bond, in an amount yet to be determined, and any payment of damages will be delayed while the appeals process runs its course, which could take up to 2 years. The Company continues to believe that the verdict is not supported by the facts or by applicable law and we are in the process of filing post-trial motions to redress errors made during the trial. The Company, based on its own assessment as well as that of outside counsel, believes that the trial court committed a number of prejudicial legal errors and that these errors were significant, making the possibility of reversal of the judgment on appeal and/or a new trial probable. Accordingly, at September 30, 2010, in accordance with the authoritative guidance on the evaluation of contingencies, the Company has not recorded an accrual related to this litigation. The Company may be required to record an expense related to this damage award in the future.

Item 1A. Risk Factors

An investment in our common stock involves a high degree of risk. You should consider carefully the risks and uncertainties described under Item 1A of Part I of our Annual Report on Form 10-K, as amended, filed with the Securities and Exchange Commission for the year ended December 31, 2009 (the Risk Factors), together with all other information contained or incorporated by reference in this report before you decide to invest in our common stock. If any of the risks described in this report or in our annual report actually occurs, our business, financial condition, results of operations and our future growth prospects could be materially and adversely affected. Under these circumstances, the trading price of our common stock could decline, and you may lose all or part of your investment. There have been no material changes to the Risk Factors except as described below.

We are currently involved in a trademark litigation action involving the NueroVision brand name and, if we do not prevail on our appeal of the verdict, we could be liable for substantial damages.

A judgment in our ongoing trademark dispute regarding the NeuroVision brand name was handed down by the U.S. District Court for the Central District of California. An unfavorable jury verdict was delivered against us in our use of the NeuroVision name. The verdict, which we plan to immediately appeal, awarded damages to the plaintiff of $60 million, provided that the damages amount is subject to change in the final judgment at the judge s discretion and also based on additional rulings to be made in the case. While we intend to post a supersedeas bond, which will delay our requirement to pay damages while the appeals process continues, the cost of the bond is undetermined and could result in a material expense to us. While this case relates solely to the use of the NeuroVision brand name and does not involve our proprietary neuromonitoring technology underlying the NeuroVision system or future products, it may require us to rebrand and re-market the NeuroVision brand name. This could result in a significant impact on our marketing costs and other related financial costs. There is a chance that the acceptance of a new brand name will be lengthy and may not be well received by our customers. The appeals process could be expensive, complex and lengthy and its outcome is difficult to predict. We may also be subject to negative publicity due to this trademark litigation. The litigation required during the appeals process may significantly divert the attention of our technical and management personnel. We are unable to predict the outcome of our appeal. In the event that we are unsuccessful in our appeal, we could be required to pay significant damages, of which are outside of the coverage of any of our insurance plans. As a result, our business, financial condition or results of operations could be materially adversely affected.

Item 5. Other Information

On September 14, 2010, Alexis Lukianov, our Chairman and Chief Executive Officer, Keith Valentine, our President and Chief Operating Officer, Jason Hannon, our Executive Vice President, General Counsel and Secretary, and Jeffrey Rydin our Executive Vice President, Americas, Sales and Chairman of the Global Sales Executive Committee, each adopted a stock trading plan for trading in NuVasive s common stock, currently held or issuable upon the exercise of stock options, in accordance with the guidelines specified by the Securities and Exchange Commission s Rule 10b5-1 under the Securities Exchange Act of 1934. Messrs. Lukianov, Valentine, Hannon and Rydin will each file a Form 4 evidencing any such sales under each of their respective stock trading plans as required under Section 16 of the Securities Exchange Act of 1934. This type of trading plan allows a corporate insider to gradually diversify holdings of company stock while minimizing any market effects of such trades by spreading them

out over an extended period of time and eliminating any market concern that such trades were made by a person while in possession of material nonpublic information. Consistent with Rule 10b5-1, NuVasive s insider trading policy permits personnel to implement Rule 10b5-1 trading plans provided that, among other things, such personnel are not in possession of any material nonpublic information at the time they adopt such plans.

Table of Contents

Pursuant to the stock trading plan adopted by Mr. Lukianov, between December 2010 and November 2011, he will sell 10,000 shares each month if the stock is above a prearranged minimum price, and may sell up to 10,000 additional shares each month based on increasing price levels. Under his trading plan, he may also sell up to a total of 8,994 additional shares in December 2010 if the stock is above a prearranged minimum price. If the prearranged minimum price is not met and the 8,994 shares are not sold, the 8,994 shares will carry forward to the next month until the prearranged minimum price is met and all shares are sold, unless the trading plan expires before such shares are sold.

Pursuant to the stock trading plan adopted by Mr. Valentine, between December 2010 and November 2011, he will sell 3,000 shares each month if the stock is above a prearranged minimum price, and may sell up to 7,000 additional shares each month based on increasing price levels. Under his trading plan, he may also sell up to a total of 2,015 additional shares in December 2010 if the stock is above a prearranged minimum price. If the prearranged minimum price is not met and the 2,015 shares are not sold, the 2,015 shares will carry forward to the next month until the prearranged minimum price is met and all shares are sold, unless the trading plan expires before such shares are sold.

Pursuant to the stock trading plan adopted by Mr. Hannon, between December 2010 and November 2011, he will sell 2,000 shares each month if the stock is above a prearranged minimum price, and may sell up to 4,000 additional shares each month based on increasing price levels.

Pursuant to the stock trading plan adopted by Mr. Rydin, between December 2010 and November 2011, he will sell 1,000 shares each month if the stock is above a prearranged minimum price, and may sell up to 5,000 additional shares each month based on increasing price levels. Under his trading plan, he may also sell up to a total of 713 additional shares in December 2010 if the stock is above a prearranged minimum price. If the prearranged minimum price is not met and the 713 shares are not sold, the 713 shares will carry forward to the next month until the prearranged minimum price is met and all shares are sold, unless the trading plan expires before such shares are sold.

Table of Contents

Item 6. Exhibits

EXHIBIT INDEX

Exhibit No	Description
3.1 (1)	Restated Certificate of Incorporation
3.2 (2)	Restated Bylaws
31.1	Certification of Chief Executive Officer pursuant to Rules 13a-14 and 15d-14 promulgated under the Securities Exchange Act of 1934
31.2	Certification of Chief Financial Officer pursuant to Rules 13a-14 and 15d-14 promulgated under the Securities Exchange Act of 1934
32 *	Certifications 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
101**	XBRL Instance Document
101**	XBRL Taxonomy Extension Schema Document
101**	XBRL Taxonomy Calculation Linkbase Document
101**	XBRL Taxonomy Label Linkbase Document
101**	XBRL Taxonomy Presentation Linkbase Document

(1) Incorporated by reference to our Quarterly Report on Form 10-Q filed with the Commission on August 13, 2004.

(2) Incorporated by reference to our Current Report on Form 8-K filed with the Commission on December 15, 2008.

* These certifications are being furnished

solely to accompany this quarterly report pursuant to 18 U.S.C. Section 1350, and are not being filed for purposes of Section 18 of the Securities Exchange Act of 1934 and are not to be incorporated by reference into any filing of NuVasive, Inc., whether made before or after the date hereof, regardless of any general incorporation language in such filing.

** Pursuant to applicable securities laws and regulations, we are deemed to have complied with the reporting obligation relating to the submission of interactive data files in such exhibits and are not subject to liability under any anti-fraud provisions of the federal securities laws as long as we have made a good faith attempt to

comply with the submission requirements and promptly amend the interactive data files after becoming aware that the interactive data files fail to comply with the submission requirements. Users of this data are advised that, pursuant to Rule 406T, these interactive data files are deemed not filed and otherwise are not subject to liability.

Table of Contents

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.

NuVasive, Inc.

Date: November 5, 2010

By: /s/ Alexis V. Lukianov
Alexis V. Lukianov
Chairman and Chief Executive Officer

Date: November 5, 2010

By: /s/ Michael J. Lambert
Michael J. Lambert
Executive Vice President and Chief Financial Officer

EXHIBIT INDEX

Exhibit No	Description
3.1 (1)	Restated Certificate of Incorporation
3.2 (2)	Restated Bylaws
31.1	Certification of Chief Executive Officer pursuant to Rules 13a-14 and 15d-14 promulgated under the Securities Exchange Act of 1934
31.2	Certification of Chief Financial Officer pursuant to Rules 13a-14 and 15d-14 promulgated under the Securities Exchange Act of 1934
32 *	Certifications 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
101**	XBRL Instance Document
101**	XBRL Taxonomy Extension Schema Document
101**	XBRL Taxonomy Calculation Linkbase Document
101**	XBRL Taxonomy Label Linkbase Document
101**	XBRL Taxonomy Presentation Linkbase Document

(1) Incorporated by reference to our Quarterly Report on Form 10-Q filed with the Commission on August 13, 2004.

(2) Incorporated by reference to our Current Report on Form 8-K filed with the Commission on December 15, 2008.

* These certifications are being furnished

solely to accompany this quarterly report pursuant to 18 U.S.C. Section 1350, and are not being filed for purposes of Section 18 of the Securities Exchange Act of 1934 and are not to be incorporated by reference into any filing of NuVasive, Inc., whether made before or after the date hereof, regardless of any general incorporation language in such filing.

** Pursuant to applicable securities laws and regulations, we are deemed to have complied with the reporting obligation relating to the submission of interactive data files in such exhibits and are not subject to liability under any anti-fraud provisions of the federal securities laws as long as we have made a good faith attempt to

comply with the submission requirements and promptly amend the interactive data files after becoming aware that the interactive data files fail to comply with the submission requirements. Users of this data are advised that, pursuant to Rule 406T, these interactive data files are deemed not filed and otherwise are not subject to liability.