

OSCIENT PHARMACEUTICALS CORP

Form 10-Q

August 11, 2008

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 10-Q

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

For the Quarterly Period Ended: June 30, 2008

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

Commission File No: 0-10824

OSCIENT PHARMACEUTICALS CORPORATION

(Exact name of registrant as specified in its charter)

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MASSACHUSETTS
(State or other jurisdiction of
incorporation or organization)

04-2297484
(I.R.S. Employer
Identification no.)

1000 WINTER STREET, SUITE 2200

WALTHAM, MASSACHUSETTS
(Address of principal executive offices)

02451
(Zip code)

Registrant's telephone number: (781) 398-2300

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

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

Large accelerated filer Accelerated filer
Non-accelerated filer (Do not check if a smaller reporting company) Smaller Reporting Company
Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

COMMON STOCK
\$0.10 PAR VALUE

14,217,370 Shares
Outstanding August 4, 2008

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	June 30, 2008 (unaudited)	December 31, 2007
ASSETS		
Current Assets:		
Cash and cash equivalents	\$ 27,555	\$ 48,268
Notes receivable		486
Accounts receivable (net of allowance for bad debts of \$35 in 2008 and 2007, respectively)	9,890	15,032
Inventories, net	7,522	9,059
Prepaid expenses and other current assets	3,292	2,886
Total current assets	48,259	75,731
Property and Equipment, at cost:		
Manufacturing and computer equipment	4,453	4,695
Equipment and furniture	579	564
Leasehold improvements	183	138
	5,215	5,397
Less Accumulated depreciation	4,542	4,590
	673	807
Restricted cash	4,198	4,198
Other assets	4,842	5,585
Intangible assets, net	106,349	110,903
Goodwill	76,960	76,960
Total Assets	\$ 241,281	\$ 274,184
LIABILITIES AND SHAREHOLDERS DEFICIT		
Current Liabilities:		
Short-term obligations	\$ 13,337	\$ 38
Accounts payable	8,367	10,262
Accrued expenses and other current liabilities	23,836	20,928
Current portion of accrued facilities impairment charge	3,090	2,128
Deferred revenue	364	364
Total current liabilities	48,994	33,720
Long-term liabilities:		
Long-term obligations, net of current maturities	247,301	252,859
Noncurrent portion of accrued facilities impairment charge	6,867	8,831
Other long-term liabilities	4,057	7,216
Deferred revenue	91	273
Shareholders Deficit:		

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Common stock, \$0.10 par value Authorized 174,375 shares, Issued and Outstanding 14,140 and 13,892 in 2008 and 2007, respectively	1,414	1,389
Series B restricted common stock, \$0.10 par value Authorized 625 shares, Issued and outstanding none		
Additional paid-in-capital	416,516	415,654
Accumulated deficit	(483,959)	(445,758)
Total shareholders deficit	(66,029)	(28,715)
Total Liabilities and Shareholders Deficit	\$ 241,281	\$ 274,184

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

Table of Contents**OSCIENT PHARMACEUTICALS CORPORATION****CONSOLIDATED STATEMENTS OF OPERATIONS (Unaudited)**

(in thousands, except per share data)

	Three-Months Ended June 30, 2008	Three-Months Ended June 30, 2007	Six-Months Ended June 30, 2008	Six-Months Ended June 30, 2007
Revenues (net):				
Product sales	\$ 20,193	\$ 15,762	\$ 38,461	\$ 37,805
Other revenues	92	151	190	1,307
Total net revenues	20,285	15,913	38,651	39,112
Costs and expenses:				
Cost of product sales (1)	6,348	6,591	13,363	15,345
Research and development (1)	521	1,292	1,864	2,797
Selling and marketing (1)	18,190	14,348	37,942	31,803
General and administrative (1)	3,936	2,914	7,826	6,473
Total costs and expenses	28,995	25,145	60,995	56,418
Loss from operations	(8,710)	(9,232)	(22,344)	(17,306)
Other (expense) income:				
Interest income	147	720	503	1,210
Interest expense	(8,373)	(6,369)	(16,687)	(10,847)
Gain on disposition of investment	96		412	158
Gain on exchange of convertible notes		30,824		30,824
Gain on derivative related to long-term debt	158	394	115	394
Other income	2	48	10	97
Net other (expense) income	(7,970)	25,617	(15,647)	21,836
(Loss) income before income tax	(16,680)	16,385	(37,991)	4,530
Provision for income tax	(105)	(108)	(210)	(215)
Net (loss) income	\$ (16,785)	\$ 16,277	\$ (38,201)	\$ 4,315
Net (loss) income per common share: basic	\$ (1.20)	\$ 1.20	\$ (2.73)	\$ 0.32
Net (loss) income per common share: diluted	\$ (1.20)	\$ 0.62	\$ (2.73)	\$ 0.32
Weighted average common shares outstanding: basic	13,969,639	13,587,513	13,969,690	13,584,582
Weighted average common shares outstanding: diluted	13,969,639	26,051,143	13,967,690	13,589,780

(1) Includes non-cash stock-based compensation as follows:

Cost of product sales	\$ 44	\$ 10	\$ 31	\$ 14
Research and development	\$ (7)	\$ 78	\$ 2	\$ 78

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Selling and marketing	\$	(151)	\$	147	\$	129	\$	466
General and administrative	\$	327	\$	441	\$	630	\$	821

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

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(in thousands)

	Six-Months Ended	
	June 30, 2008	June 30, 2007
Cash Flows from Operating Activities:		
Net (loss) income	\$ (38,201)	\$ 4,315
Adjustments to reconcile net (loss) income to net cash used in operating activities:		
Depreciation and amortization	4,775	4,966
Provision for excess and obsolete inventories	338	142
Recovery of bad debts		(172)
Non-cash interest expense	7,227	2,761
Gain on exchange of convertible notes		(30,824)
Gain on change in fair value of derivatives	(115)	(394)
Gain on disposition of investment	(412)	(158)
Stock based compensation	792	1,379
Changes in operating assets and liabilities:		
Accounts receivable	5,142	3,268
Inventories	1,199	2,812
Prepaid expenses and other current assets	(406)	(388)
Accounts payable	(1,895)	(2,119)
Accrued expenses and other liabilities	90	(1,942)
Deferred revenue	(182)	(25)
Accrued facilities impairment charge	(1,213)	(1,346)
Accrued other long-term liabilities	1,296	1,387
Net cash used in operating activities	(21,565)	(16,338)
Cash Flows from Investing Activities:		
Proceeds from disposition of investment	412	158
Proceeds from repayments of notes receivable	486	409
Purchases of property and equipment	(87)	(8)
Increase in other assets	(35)	(1,171)
Decrease in restricted cash		2,482
Proceeds from sale of property and equipment		3