

AMERICAN TECHNOLOGY CORP /DE/  
Form 10-Q/A  
January 07, 2008  
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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM 10-Q/A**

(Amendment No. 1)

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(Mark one)

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
For the quarterly period ended June 30, 2007

or

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
For the transition period from \_\_\_\_\_ to \_\_\_\_\_.

Commission File Number: 000-24248

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**AMERICAN TECHNOLOGY CORPORATION**

(Exact name of registrant as specified in its charter)

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Delaware  
(State or other jurisdiction of

incorporation or organization)

15378 Avenue of Science, Ste 100, San Diego,

87-0361799  
(I.R.S. Employer

Identification Number)

92128

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**California**  
(Address of principal executive offices)

**(858) 676-1112**

(Zip Code)

(Registrant's telephone number, including area code)

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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, or a non-accelerated filer. See definition of accelerated filer and large accelerated filer in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer  Accelerated filer  Non-accelerated filer

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

The number of shares of Common Stock, \$.00001 par value, outstanding on August 2, 2007 was 30,535,207.

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**EXPLANATORY NOTE**

This Amendment No. 1 on Form 10-Q/A to the Quarterly Report on Form 10-Q of American Technology Corporation (the Company) for the quarter ended June 30, 2007 amends and restates the historical consolidated financial statements of the Company as of and for the fiscal quarter and nine months ended June 30, 2007 previously included in the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2007 (the Original Form 10-Q). The previously issued consolidated financial statements of the Company have been amended to increase the Company's payroll tax liability by \$135,601 and a corresponding increase in selling, general and administrative expense for the three and nine months ended June 30, 2007. The estimated payroll tax liability was increased based on the amended payroll tax returns for tax years 2004 and 2005 filed in December 2007 and to include an estimate for penalties and interest as a result of the Company's delay in completing an analysis of payroll tax liabilities and filing the amended payroll tax returns. See Note 2 to the Company's unaudited consolidated financial statements included in Part I - Item 1. Financial Statements of this report for additional information.

As a result of the Restatement, the net loss available to common stockholders increased from \$1,011,366 and \$2,558,062 for the three and nine months ended June 30, 2007, respectively, to \$1,146,967 and \$2,693,663. The loss per share of common stock increased from \$0.03 and \$0.08 for the three and nine months ended June 30, 2007, respectively, to \$0.04 and \$0.09. Current liabilities increased from \$1,595,437 as of June 30, 2007 to \$1,731,038.

Part I - Item 1. Consolidated Financial Statements, Part I - Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations and Part I - Item 4. Controls and Procedures are amended and restated to reflect the adjustment indicated above. The Company has supplemented Item 6 of Part II to include current certifications of our Chief Executive Officer and Chief Financial Officer pursuant to Sections 302 and 906 of the Sarbanes - Oxley Act of 2002, included as Exhibits 31 and 32 to this Amendment. No other information included in the Original Form 10-Q is being amended. This Amendment amends and restates in its entirety the Original Form 10-Q filed with the Securities and Exchange Commission (SEC) on August 8, 2007 (the Original Filing Date). Pursuant to Rule 12b-15 under the Securities Exchange Act of 1934, as amended, this Amendment contains the complete text of the items of the Original Form 10-Q that are being amended and restated, in addition to the text of the unaffected items or exhibits. Except as stated above, this Amendment speaks only as of the Original Filing Date, and this filing has not been updated to reflect any events occurring after the Original Filing Date or to modify or update disclosure affected by other subsequent events. In particular, forward-looking statements included in this Amendment represent management's views as of the Original Filing Date. Such forward-looking statements should not be assumed to be accurate as of any future date. This Amendment should be read in conjunction with the Company's other filings made with the SEC subsequent to the Original Filing Date, together with any amendments to those filings.

As previously disclosed in the Company's Form 8-K filed on January 2, 2008, the Company's unaudited quarterly consolidated financial statements previously included in the Original Form 10-Q should not be relied upon.

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**PART I. FINANCIAL INFORMATION**

**Item 1. Consolidated Financial Statements**  
**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

Board of Directors and Shareholders of  
American Technology Corporation

We have reviewed the accompanying consolidated balance sheet of American Technology Corporation (the Company) as of June 30, 2007, and the related consolidated statements of operations and cash flows for the three-month and nine-month periods ended June 30, 2007 and 2006. These financial statements are the responsibility of the Company's management.

We conducted our review in accordance with the standards of the Public Company Accounting Oversight Board (United States). A review of interim financial information consists principally of applying analytical procedures and making inquiries of persons responsible for financial and accounting matters. It is substantially less in scope than an audit conducted in accordance with the standards of the Public Company Accounting Oversight Board (United States), the objective of which is the expression of an opinion regarding the financial statements taken as a whole. Accordingly, we do not express such an opinion.

Based on our review, we are not aware of any material modifications that should be made to the consolidated financial statements referred to above for them to be in conformity with accounting principles generally accepted in the United States of America

As discussed in Note 2 to the accompanying consolidated financial statements, the Company has restated its previously issued consolidated financial statements as of June 30, 2007 for the three and nine months then ended.

/s/ Swenson Advisors, LLP

San Diego, California

August 8, 2007, except for Note 2, as to which the date is January 4, 2008

**Table of Contents****American Technology Corporation****CONSOLIDATED BALANCE SHEETS**

	<b>June 30, 2007 (Unaudited, as restated)</b>	<b>September 30, 2006</b>
<b>ASSETS</b>		
<b>Current assets:</b>		
Cash and cash equivalents	\$ 6,997,562	\$ 9,896,342
Accounts receivable, less allowance of \$622,105 and \$687,027 for doubtful accounts	1,194,783	2,055,132
Inventories, net of \$68,587 and \$11,714 reserve for obsolescence	5,356,044	4,449,680
Prepaid expenses and other	240,605	139,214
<b>Total current assets</b>	<b>13,788,994</b>	<b>16,540,368</b>
<b>Equipment, net</b>	<b>458,485</b>	<b>693,534</b>
<b>Patents, net</b>	<b>1,328,650</b>	<b>1,416,012</b>
<b>Deposits</b>	<b>58,265</b>	<b>58,265</b>
<b>Total assets</b>	<b>\$ 15,634,394</b>	<b>\$ 18,708,179</b>
<b>LIABILITIES AND STOCKHOLDERS EQUITY</b>		
<b>Current liabilities:</b>		
Accounts payable	\$ 831,156	\$ 1,904,027
<b>Accrued liabilities:</b>		
Payroll and related	401,913	759,705
Deferred revenue	302,615	351,658
Warranty reserve	195,354	803,162
Legal settlements		53,750
Other		9,203
<b>Total current liabilities</b>	<b>1,731,038</b>	<b>3,881,505</b>
<b>Long-term liabilities:</b>		
Extended warranty		2,000
Derivative warrant instrument		1,221,300
<b>Total liabilities</b>	<b>1,731,038</b>	<b>5,104,805</b>
<b>Commitments and contingencies</b>		
<b>Stockholders equity</b>		
Preferred stock, \$0.00001 par value; 5,000,000 shares authorized: none issued and outstanding		
Common stock, \$0.00001 par value; 50,000,000 shares authorized; 30,535,207 and 30,083,227 shares issued and outstanding respectively		
	305	301
Additional paid-in capital	78,537,001	74,663,660
Accumulated deficit	(64,633,950)	(61,060,587)
<b>Total stockholders equity</b>	<b>13,903,356</b>	<b>13,603,374</b>
<b>Total liabilities and stockholders equity</b>	<b>\$ 15,634,394</b>	<b>\$ 18,708,179</b>

See accompanying notes to interim consolidated financial statements

**Table of Contents****American Technology Corporation****CONSOLIDATED STATEMENTS OF OPERATIONS**

(Unaudited)

	For the three months ended June 30,		For the nine months ended June 30,	
	2007 (as restated)	2006	2007 (as restated)	2006
<b>Revenues:</b>				
Product sales	\$ 2,012,971	\$ 3,086,599	\$ 7,946,836	\$ 6,287,812
Contract, license and other	139,600	78,180	371,356	265,383
Total revenues	2,152,571	3,164,779	8,318,192	6,553,195
Cost of revenues	1,154,336	2,119,245	4,242,542	4,255,309
<b>Gross profit</b>	998,235	1,045,534	4,075,650	2,297,886
<b>Operating expenses:</b>				
Selling, general and administrative	1,687,405	2,151,051	5,415,771	6,521,188
Research and development	492,835	459,904	1,591,150	1,528,114
Total operating expenses	2,180,240	2,610,955	7,006,921	8,049,302
Loss from operations	(1,182,005)	(1,565,421)	(2,931,271)	(5,751,416)
<b>Other income (expense):</b>				
Interest income	89,548	43,900	295,852	189,002
Interest expense		(558)	(32,890)	(1,101)
Gain/(loss) on asset disposition	(54,510)	3,443	(25,354)	(48,628)
Unrealized gain on derivative revaluation		669,300		1,362,000
Total other income	35,038	716,085	237,608	1,501,273
<b>Net loss</b>	\$ (1,146,967)	\$ (849,336)	\$ (2,693,663)	\$ (4,250,143)
<b>Net loss per share of common stock - basic and diluted</b>	\$ (0.04)	\$ (0.03)	\$ (0.09)	\$ (0.17)
<b>Average weighted number of common shares outstanding</b>	30,535,207	24,485,215	30,255,564	24,390,518

See accompanying notes to interim consolidated financial statements



**Table of Contents****American Technology Corporation****CONSOLIDATED STATEMENTS OF CASH FLOWS**

(Unaudited)

	<b>For the nine months ended June 30,</b>	
	<b>2007</b>	<b>2006</b>
	<b>(as restated)</b>	
Increase (Decrease) in Cash		
Operating Activities:		
Net loss	\$ (2,693,663)	\$ (4,250,143)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	373,690	345,286
Provision for doubtful accounts	(64,922)	35,228
Warranty provision	(101,358)	300,658
Inventory obsolescence	56,873	(174,469)
Loss on disposition of assets	(34,341)	48,628
Stock-based compensation	912,083	613,688
Write-off of abandoned patents	59,696	
Unrealized gain on derivative revaluation		(1,362,000)
Changes in assets and liabilities:		
Accounts receivable	925,271	(1,831,336)
Inventories	(963,237)	(565,515)
Prepaid expenses and other	(101,391)	109,531
Accounts payable	(1,072,871)	438,511
Warranty reserve	(508,450)	(176,745)
Accrued liabilities	(469,788)	(320,801)
Net cash used in operating activities	(3,682,408)	(6,789,479)
Investing Activities:		
Purchase of equipment	(42,273)	(357,516)
Proceeds from the sale of assets	36,500	
Patent costs paid	(70,861)	(158,083)
Long-term deposits		(58,265)
Net cash used in investing activities	(76,634)	(573,864)
Financing Activities:		
Payments on capital lease		(10,023)
Proceeds from exercise of common stock warrants	817,662	
Proceeds from exercise of stock options	42,600	610,940
Net cash provided by financing activities	860,262	600,917
Net decrease in cash	(2,898,780)	(6,762,426)
Cash, beginning of period	9,896,342	10,347,779
Cash, end of period	\$ 6,997,562	\$ 3,585,353
Supplemental Disclosure of Cash Flow Information		
Cash paid for interest	\$	\$ 1,101

See accompanying notes to interim consolidated financial statements

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**American Technology Corporation**

**Notes to Interim Consolidated Financial Statements (unaudited)**

**1. OPERATIONS**

American Technology Corporation, a Delaware corporation (the "Company"), is engaged in the design, development and commercialization of directed sound technologies and products. The principal markets for the Company's proprietary sound reproduction technologies and products are in North America, Europe and Asia.

In February 2006, the Company incorporated a wholly owned subsidiary, American Technology Holdings, Inc. The Company plans for this subsidiary to conduct international marketing, sales and distribution activities. The consolidated financial statements include the accounts of this subsidiary after elimination of intercompany transactions and accounts.

**2. STATEMENT OF PRESENTATION, RESTATEMENT OF CONDENSED CONSOLIDATED FINANCIAL STATEMENTS AND MANAGEMENT'S PLAN**

The accompanying unaudited interim financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America for interim financial information. In the opinion of management, the interim financial statements reflect all adjustments of a normal recurring nature necessary for a fair presentation of the results for interim periods. Operating results for the three and nine month periods are not necessarily indicative of the results that may be expected for the year. The interim financial statements and notes thereto should be read in conjunction with the Company's audited financial statements and notes thereto for the year ended September 30, 2006 included in the Company's annual report on Form 10-K. Effective October 1, 2006, the Company's two former business units were aggregated into one reportable segment (See Note 17). Certain amounts reported in prior periods have been reclassified to be consistent with the current period presentation.

The previously issued financial statements of the Company for the three and nine months ended June 30, 2007 have been restated to increase the estimated payroll tax liability at June 30, 2007 by \$135,601 pursuant to Statement of Financial Accounting Standards (SFAS) No. 154, Accounting Changes and Error Corrections. As reported in our Annual Report on Form 10-K for the year ended September 30, 2006, the Company corrected errors in the reporting of stock options, which resulted in additional payroll tax liabilities of \$200,601 being recorded. During the Company's third quarter ended June 30, 2007, it revised the estimated payroll tax liability related to this matter to \$65,000 prior to completing a thorough analysis of the payroll tax matter. Following extensive subsequent analysis by the Company, it determined that the reduction of the estimated payroll tax liability recorded during the fiscal third quarter resulted in an understatement of the payroll tax liability as of June 30, 2007 in the amount of \$135,601 based on the final amended payroll tax filings and due to an increase for estimated penalties and interest that the Company now believes may be assessed. The increased estimated payroll tax resulted in a \$135,601 increase in selling, general and administrative expense for the three and nine months ended June 30, 2007. The net loss per share of common stock increased from \$0.03 per share to \$0.04 per share. There is no tax effect resulting from this restatement because a full valuation allowance has been recorded to offset the deferred tax asset.

The Company incurred net losses of \$1,146,967 and \$849,336 in the three months ended June 30, 2007 and 2006, respectively, and net losses of \$2,693,663 and \$4,250,143 in the nine months ended June 30, 2007 and 2006, respectively. Management believes the Company has adequate financial resources to execute its fiscal 2007 operating plan and to sustain operations for the next twelve months. Management's operating plan includes (a) growing revenues by focusing on direct sales to larger commercial and defense related companies, (b) improving product margins by reducing unit product costs and monitoring manufacturing overhead, and (c) controlling research and development and selling, general and administrative costs. Nevertheless, the Company's operating results will depend on future product sales levels and other factors, some of which are beyond the Company's control. There can be no assurance the Company can achieve positive cash flow or profitability. If required, management has significant flexibility to take remedial actions to adjust the level of research and development and selling, general and administrative expenses based on the availability of resources.

**3. RECENT ACCOUNTING PRONOUNCEMENTS**

In September 2006, the Financial Accounting Standards Board (FASB) issued SFAS No. 157, Fair Value Measurements. This standard defines fair value, establishes a framework for measuring fair value in accounting principles generally accepted in the United States of America, and expands disclosure about fair value measurements. In February 2007, the FASB issued SFAS No. 159, The Fair Value Option for Financial Assets and Financial Liabilities Including an Amendment of FASB Statement No. 115, which will permit the option of choosing to measure certain eligible items at fair value at specified election dates and report unrealized gains and losses in earnings. SFAS Nos. 157 and 159 will

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become effective for the Company for fiscal year 2009, and interim periods within the fiscal year. The Company is currently evaluating the requirements of SFAS Nos. 157 and 159, and has not yet determined the likely, if any, impact on future financial statements.

In June 2006, the FASB issued FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes* (FIN 48). FIN 48 clarifies the accounting for uncertainty in income taxes recognized in an enterprise's financial statements in accordance with FASB Statement No. 109, *Accounting for Income Taxes*. FIN 48 prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. FIN 48 also provides guidance on de-recognition, classification, interest and penalties, accounting in interim periods, disclosure, and transition. FIN 48 will be effective commencing with the Company's fiscal year 2008. The Company

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does not expect that the adoption of FIN 48 will have a significant impact on its consolidated financial position, results of operations and cash flows. However, the Company is evaluating the impact that FIN 48 will have on the amount, reporting and disclosures of fully reserved deferred tax assets resulting primarily from tax loss and tax credit carryforwards.

**4. ACCOUNTS RECEIVABLE**

Accounts receivable, net, consist of the following:

	June 30, 2007	September 30, 2006
Accounts Receivable	\$ 1,816,888	\$ 2,742,159
Less allowances for doubtful accounts	(622,105)	(687,027)
<b>Total, net</b>	<b>\$ 1,194,783</b>	<b>\$ 2,055,132</b>

**5. INVENTORIES AND CONTRACT MANUFACTURING**

Inventories are stated at the lower of cost, which approximates actual costs on a first in, first out cost basis, or market. Inventories consisted of the following:

	June 30, 2007	September 30, 2006
Finished goods	\$ 1,632,049	\$ 2,104,202
Work in process	126,523	49,287
Raw materials	3,666,059	2,307,905
	5,424,631	4,461,394
Reserve for obsolescence	(68,587)	(11,714)
<b>Total, net</b>	<b>\$ 5,356,044</b>	<b>\$ 4,449,680</b>

**6. EQUIPMENT**

Equipment consists of the following:

	June 30, 2007	September 30, 2006
Machinery and equipment	\$ 432,363	\$ 449,899
Office furniture and equipment	920,875	914,650
Leasehold improvements	260,591	245,252
	1,613,829	1,609,801
Accumulated depreciation	(1,155,344)	(916,267)
<b>Equipment, net</b>	<b>\$ 458,485</b>	<b>\$ 693,534</b>

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Included in office furniture and equipment at June 30, 2007 and September 30, 2006 were \$497,049 and \$490,148, respectively, for purchased software, which is amortized over three years. The unamortized portion of software at June 30, 2007 and September 30, 2006 were \$48,664 and \$109,790, respectively.

Depreciation expense, excluding amortization of software, was \$207,137 and \$154,763 for the nine months ended June 30, 2007 and 2006, respectively. Amortization of purchased software was \$68,026 and \$94,978 for the nine months ended June 30, 2007 and 2006, respectively.

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Patents are carried at cost and, when granted, are amortized over their estimated useful lives. The carrying value of patents is periodically reviewed and impairments, if any, are recognized when the expected future benefit to be derived from an individual intangible asset is less than its carrying value. Patents consisted of the following:

	June 30, 2007	September 30, 2006
Cost	\$ 1,916,651	\$ 1,960,786
Accumulated amortization	(588,001)	(544,774)
Patents, net	\$ 1,328,650	\$ 1,416,012

**8. PRODUCT WARRANTY COST**

The Company establishes a warranty reserve based on anticipated warranty claims at the time product revenue is recognized. Factors affecting warranty reserve levels include the number of units sold, anticipated cost of warranty repairs and anticipated rates of warranty claims. The Company evaluates the adequacy of the provision for warranty costs each reporting period.

Changes in the warranty reserve during the three and nine months ended June 30, 2007 and 2006 were as follows:

	Three Months Ended June 30,		Nine Months Ended June 30,	
	2007	2006	2007	2006
Beginning balance	\$ 239,871	\$ 349,730	\$ 805,162	\$ 248,981
Warranty provision	(7,438)	89,275	(101,358)	300,658
Warranty payments	(37,079)	(66,111)	(508,450)	(176,745)
Ending balance	\$ 195,354	\$ 372,894	\$ 195,354	\$ 372,894

In the fiscal year ended September 30, 2006, the Company increased its reserve for warranty claims by \$372,460 for replacement costs associated with a custom unit designed for an OEM brand of HSS units. At June 30, 2007, all costs associated with the replacement had been incurred. During the quarter ended March 31, 2007, the Company also modified its estimate of warranty reserve for the LRAD products to reflect the costs associated with warranty replacements. The impact of the change in estimate was to decrease the reserve, increase gross profit by approximately \$336,000 and decrease the net loss per share of common stock by \$0.01.

**9. DERIVATIVE FINANCIAL INSTRUMENTS**

In accordance with EITF 00-19 Accounting for Derivative Financial Instruments, Indexed to, and Potentially Settled in a Company's Own Stock the Company previously valued some warrants issued in connection with various equity financings as derivative liabilities. The Company made assumptions and estimates to periodically value its derivative liabilities. Factors affecting the amount of liability included changes in the Company's stock price and other assumptions. The change in value was recorded as a non-cash income or expense item. For the nine months ended June 30, 2006, the Company recorded \$1,362,000 as an unrealized gain on derivative revaluation related to warrants and had aggregate derivative liability for warrants of \$484,000 at June 30, 2006.

Effective in the first quarter of 2007, the Company elected early adoption of FASB Staff Position No. EITF 00-19-2 issued on December 21, 2006 ( FSP 00-19-2 ). This accounting literature provides guidance on accounting for registration payment arrangements and how to account for related financial instruments. It clarifies that financial instruments, such as warrants, subject to a registration payment arrangement should be accounted for in accordance with applicable generally accepted accounting principles without regard to the contingent obligation. If upon adoption a warrant classified as a liability under EITF 00-19 is determined under applicable generally accepted accounting principles to be equity without regard to the registration payment arrangement, then it should be reclassified. The Company has recorded the effect of applying

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FSP 00-19-2 to its warrant derivative liability using the cumulative-effect transition method, which resulted in a decrease in derivative liability of \$1,221,300, and an increase to the carrying amount of additional paid-in capital of \$2,101,000 representing the original value assigned to the warrants with an offsetting cumulative-effect entry to accumulated deficit (see Note 11). The cumulative adjustment was not recorded in the consolidated statement of operations and prior periods were not adjusted.

Subsequent to the adoption FSP 00-19-2 the Company filed its Annual Report on Form 10-K for the fiscal year ended September 30, 2006 past the extended due date and has reserved for liquidated damages of \$32,890.



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The Company adopted the provisions of Statement of Financial Accounting Standards No. 123(R) Share-based payments ( SFAS 123(R) ) on October 1, 2005, using a modified prospective application, which provides for certain changes to the method for valuing share-based compensation. Under the modified prospective application, prior periods are not revised for comparative purposes. The valuation provisions of SFAS 123(R) apply to new awards and to awards that are outstanding on the effective date and subsequently modified or cancelled. Estimated compensation expense for awards outstanding at the effective date is recognized over the remaining service period using the compensation cost calculated for pro forma disclosure purposes under FASB Statement No. 123, Accounting for Stock-Based Compensation (FAS 123).

Options or stock awards issued to non-employees who are not directors of the Company are recorded at their estimated fair value at the measurement date in accordance with SFAS No. 123 and EITF Issue No. 96-18, Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring or in Conjunction with Selling Goods or Services, and are periodically revalued as the options vest and are recognized as expense over the related service period.

SFAS 123(R) also requires companies to calculate an initial pool of excess tax benefits available at the adoption date to absorb any tax deficiencies that may be recognized under SFAS 123(R). The pool includes the net excess tax benefits that would have been recognized if the Company had adopted SFAS 123(R) for recognition purposes on its effective date.

The Company has elected to calculate the pool of excess tax benefits under the alternative transition method described in FASB Staff Position ( FSP ) No. FAS 123(R)-3, Transition Election Related to Accounting for Tax Effects of Share-Based Payment Awards, which also specifies the method the Company must use to calculate excess tax benefits reported on the statement of cash flows. The Company is in a net operating loss position; therefore, no excess tax benefits from share-based payment arrangements have been recognized for the three and nine months ended June 30, 2007.

*Share-Based Compensation Information*

The Company's employee stock options have various restrictions that reduce option value, including vesting provisions and restrictions on transfer and hedging, among others, and are often exercised prior to their contractual maturity. (Note 11)

The Company recorded \$498,743 and \$235,500 of stock compensation expense for the three months ended June 30, 2007 and 2006, respectively. A total of \$23,004 and \$113,080, respectively, of this expense relates to awards granted prior to adoption of SFAS 123(R) and vesting after October 1, 2005, and \$475,739 and \$122,420, respectively, of this expense relates to options granted after the adoption of SFAS 123(R). The Company recorded \$912,083 and \$613,688 of stock compensation expense for the nine months ended June 30, 2007 and 2006, respectively. A total of \$82,150 and \$378,544, respectively, of this expense relates to awards granted prior to adoption of SFAS 123(R) and vesting after October 1, 2005, and \$829,933 and \$235,144, respectively, of this expense relates to options granted after the adoption of SFAS 123(R). The weighted-average estimated fair value of employee stock options granted during the nine months ended June 30, 2007 was \$2.06 per share using the Black-Scholes option pricing model with the following weighted-average assumptions (annualized percentages):

	<b>Nine Months Ended June 30, 2007</b>
Volatility	71%
Risk-free interest rate	4.67% - 4.69%
Forfeiture rate	20.0%
Dividend yield	0.0%
Expected life in years	3.4 - 4.9

The dividend yield of zero is based on the fact that the Company has never paid cash dividends and has no present intention to pay cash dividends. Expected volatility is based on the historical volatility of the Company's common stock over the period commensurate with the expected life of the options. The risk-free interest rate is based on observed and expected time to post-vesting exercise and forfeitures of options by employees.

As the amount of share-based compensation expense recognized in periods ended June 30, 2007 and 2006 is based on awards ultimately expected to vest, it is reduced for estimated forfeitures. SFAS 123(R) requires forfeitures to be estimated at the time of grant and revised, if

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necessary, in subsequent periods if actual forfeitures differ from those estimates. Pre-vesting forfeitures were estimated to be approximately 20% and 5% for the quarters ended June 30, 2007 and 2006, respectively, based on historical experience. Under the provisions of SFAS 123(R), the Company will record additional expense if the actual forfeiture rate is lower than estimated and will record a recovery of prior expense if the actual forfeiture is higher than estimated.

Since the Company has a net operating loss carryforward as of June 30, 2007, no excess tax benefit for the tax deductions related to share-based awards was recognized for the quarters ended June 30, 2007 and 2006. Additionally, no

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incremental tax benefits were recognized from stock options exercised in the quarters ended June 30, 2007 or 2006. Such recognition would have resulted in a reclassification to reduce net cash provided by operating activities with an offsetting increase in net cash provided by financing activities.

As of June 30, 2007, there was \$4.4 million of total unrecognized compensation cost related to non-vested share-based employee compensation arrangements. The cost is expected to be recognized over a weighted-average period of 3.9 years.

**11. STOCKHOLDERS EQUITY***Summary*

As described in Note 9, the Company elected to record the effects of applying FSP 00-19-2 using the cumulative-effect transition method, which resulted in eliminating the Company's warrant derivative liability at the beginning of the first quarter of fiscal 2007, increasing the opening balance of additional paid-in capital by the original value assigned to the warrants with the offsetting cumulative-effect entry to opening accumulated deficit. The cumulative adjustment was not recorded in the statements of operations and previous periods were not adjusted. The impact on previously reported accounts as of September 30, 2006, adjusted effective October 1, 2006, is as follows:

	September 30, 2006	FSP 00-19-2 cumulative- effect adjustment	October 1, 2006
Derivative warrant instrument	\$ 1,221,300	\$ (1,221,300)	\$
Additional paid-in capital	\$ 74,663,660	\$ 2,101,000	\$ 76,764,660
Accumulated deficit	\$ (61,060,587)	\$ (879,700)	\$ (61,940,287)
Total stockholders' equity	\$ 13,603,374	\$ 1,221,300	\$ 14,824,674

The tax effect of the identified adjustments is not significant since the Company has a full valuation allowance for deferred tax assets.

The following table summarizes changes in equity components from transactions during the nine months ended June 30, 2007:

	Shares	Amount	Additional Paid-in Capital	Accumulated Deficit (as restated)	Total Stockholders Equity
<b>Balance September 30, 2006</b>	30,083,227	\$ 301	\$ 74,663,660	\$ (61,060,587)	\$ 13,603,374
<b>Cumulative-effect adjustment of adopting FASB Staff Position No. EITF 00-19-2</b>		\$	\$ 2,101,000	\$ (879,700)	\$ 1,221,300
<b>Balance October 1, 2006 (as adjusted)</b>	30,083,227	\$ 301	\$ 76,764,660	\$ (61,940,287)	\$ 14,824,674
Issuance of common stock:					
Upon exercise of stock options	10,000		42,600		42,600
Upon exercise of warrants	441,980	4	817,658		817,662
Stock-based compensation expense			912,083		912,083
Net loss for the period				(2,693,663)	(2,693,663)
<b>Balance, June 30, 2007</b>	30,535,207	\$ 305	\$ 78,537,001	\$ (64,633,950)	\$ 13,903,356

**Table of Contents***Stock Options*

For the nine months ended June 30, 2007 and 2006, share-based compensation expense was \$912,083 and \$613,688, respectively (See Note 10).

As of June 30, 2007, the Company had two equity incentive plans. The 2005 Equity Incentive Plan ( 2005 Equity Plan ), as amended, authorizes for issuance as stock options, stock appreciation rights, or stock awards an aggregate of 3,250,000 new shares of common stock to employees, directors or consultants. This includes an amendment during the three months ended June 30, 2007 to increase the number of shares by 1,750,000, as approved by the Board of Directors and stockholders. The total plan reserve, including the new shares and shares currently reserved under prior plans, allows for the issuance of up to 5,062,501 shares. The reserve under the 2005 Equity Plan will include any shares subject to options under the Company's prior plans that expire or become unexercisable for any reason without having been exercised in full. As a result of the effectiveness of the 2005 Equity Plan, the 2002 Stock Option Plan ( 2002 Plan ) is no longer available for new option grants. At June 30, 2007, there were options outstanding covering 2,616,783 shares of common stock under the 2005 Equity Plan.

The 2002 Plan reserved for issuance 2,350,000 shares of common stock. The 2002 Plan was terminated with respect to new grants in April 2005 but remains in effect for grants prior to that time. At June 30, 2007, there were options outstanding covering 403,061 shares of common stock under the 2002 Plan.

*Other Employee Stock Options*

The Company has granted options outside the above plans as inducements to employment to new employees. At June 30, 2007, there were options outstanding covering 32,000 shares of common stock from grants outside the stock option plans.

The following table summarizes information about stock option activity during the nine months ended June 30, 2007:

	Number of Shares	Weighted Average Exercise Price
Outstanding October 1, 2006	1,496,573	\$ 4.67
Granted	2,049,000	\$ 3.93
Canceled/expired	(483,729)	\$ 5.01
Exercised	(10,000)	\$ 4.26
Outstanding June 30, 2007	3,051,844	\$ 4.14
Exercisable at June 30, 2007	1,274,214	\$ 4.28

Options outstanding are exercisable at prices ranging from \$2.60 to \$9.48 and expire over the period from 2008 to 2012 with an average life of 4.07 years.

*Stock Purchase Warrants*

The following table summarizes information about warrant activity during the nine months ended June 30, 2007:

	Warrants Number of Shares	Weighted Average Exercise Price
Outstanding October 1, 2006	4,164,927	\$ 3.65
Issued		
Exercised	(441,980)	1.85
Canceled/expired	(282,629)	5.46

Outstanding June 30, 2007	3,440,318	\$	3.74
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At June 30, 2007, the following stock purchase warrants were outstanding arising from offerings and other transactions:

Number	Exercise Price	Expiration Date
100,000	\$ 4.25	September 30, 2007
353,625	\$ 3.25*	December 31, 2007
50,000	\$ 3.63	April 8, 2008
838,489	\$ 5.44*	July 18, 2009
75,000	\$ 8.60	December 31, 2009
75,000	\$ 9.28	December 31, 2009
1,948,204	\$ 2.67*	August 7, 2010

3,440,318

\* These warrants contain certain antidilution rights if the Company sells securities for less than the exercise price.

**12. NET LOSS PER SHARE**

Basic net loss per share includes no dilution and is computed by dividing net loss available to common stockholders, after deduction for cumulative imputed and accreted dividends, by the weighted average number of common shares outstanding for the period. Diluted net loss per share reflects the potential dilution of securities that could share in the earnings of an entity. The Company's losses for the periods presented cause the inclusion of potential common stock instruments outstanding to be antidilutive. Stock options and warrants exercisable for 6,492,162 and 4,655,208 shares of common stock were outstanding at June 30, 2007 and 2006, respectively. These securities are not included in the computation of diluted net loss per share because of the losses, but could potentially dilute earnings per share in future periods.

**13. MAJOR CUSTOMERS**

For the three months ended June 30, 2007, revenues from two customers accounted for 35% and 22% of revenues, respectively; and for the nine months ended June 30, 2007 revenues from two customers accounted for 19% and 12% of total revenues, respectively, with no other single customer accounting for more than 10% of revenues. At June 30, 2007, accounts receivable from four customers accounted for 27%, 15%, 15% and 13% of total accounts receivable with no other single customer accounting for more than 10% of the accounts receivable balance.

For the three months ended June 30, 2006, revenues from three customers accounted for 22%, 17% and 12% of revenues, respectively; and for the nine months ended June 30, 2006 revenues from three customers accounted for 22%, 20% and 10% of total revenues, respectively, with no other single customer accounting for more than 10% of revenues. At September 30, 2006, accounts receivable from three customers accounted for 30%, 20% and 14% of total accounts receivable with no other single customer accounting for more than 10% of the accounts receivable balance.

**14. LEASE FOR PRINCIPAL FACILITIES**

The Company subleases approximately 23,698 square feet of office, warehousing, product assembly, and research space located at 15378 Avenue of Science, San Diego, California 92118. The sublease is for a term expiring May 31, 2011. The agreement provides for a monthly expense of \$29,622 during the term. In addition to the monthly base rental expense, the Company is responsible for certain costs and charges specified in the sublease, including the Company's proportionate share of the building operating expenses and real estate taxes.

In addition, the sublease provides that the Company has a right of first refusal on additional space in the building, which contains a total of 68,910 square feet including the Company's premises and a \$50,000 letter of credit in the Company's favor which the Company may draw upon to the extent necessary to offset any increase in rent or relocation costs that are incurred due to the sublessor's failure to maintain the lease with the master landlord for the building.

**15. LITIGATION**

The Company may at times be involved in litigation in the ordinary course of business. The Company will, from time to time, when appropriate in management's estimation, record adequate reserves in the Company's financial statements for pending litigation. Currently, there are no pending material legal proceedings to which the Company is a party or to which any of its property is subject.

**16. INCOME TAXES**

At June 30, 2007, a valuation allowance had been provided to offset the net deferred tax asset as management had determined that it was more likely than not that the deferred tax asset would not be realized. At September 30, 2006, the Company had for federal income tax purposes net operating loss carryforwards of approximately \$54,473,000, which expire through 2027 of which certain amounts are subject to significant limitations under the Internal Revenue Code of 1986, as amended.

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### **17. BUSINESS SEGMENT DATA**

The Company is engaged in the design, development and commercialization of directed sound technologies and products. During fiscal 2006, the Company's operations were organized into two segments by the end-user markets they served. Late in fiscal 2006, in conjunction with executive management changes and a more diverse customer base, the sales force for all products and end-user markets was consolidated. Effective October 1, 2006, the former two business units were aggregated into one reportable segment due to the similarity in nature of products provided, financial performance measures (revenue growth and gross margin), methods of distribution (direct and indirect) and customer markets (each product is sold by the same personnel to government and commercial customers, domestically and internationally). The former business units are no longer separately managed and no longer considered separate business units. The Company's chief operating decision making officer reviews financial information on sound products on a consolidated basis and not by the end-user markets served. Accordingly, the Company has reclassified its prior period financial results to conform to the current period presentation of one reportable segment.

#### **Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations**

The following discussion should be read in conjunction with the accompanying unaudited interim financial statements and the related notes included under Item 1 of this Quarterly Report on Form 10-Q, together with Management's Discussion and Analysis of Financial Condition and Results of Operations included in our Annual Report on Form 10-K for the year ended September 30, 2006.

The following discussion provides an overview of our results of operations for the three and nine months ended June 30, 2007 and 2006. Significant period-to-period variances in the consolidated statements of operations are discussed under the caption Results of Operations. Our financial condition and cash flows are discussed under the caption Liquidity and Capital Resources.

#### **Forward Looking Statements**

*This report contains certain statements of a forward-looking nature relating to future events or future performance. Words such as expects, anticipates, intends, plans, believes, seeks, estimates and similar expressions or variations of such words are intended to identify forward-looking statements, but are not the only means of identifying forward-looking statements. Prospective investors are cautioned that such statements are only predictions and that actual events or results may differ materially. In evaluating such statements, prospective investors should specifically consider various factors identified in this report, including any matters set forth under Part II, Item 1A (Risk Factors) of this report and Part I, Item 1A (Risk Factors) of our Annual Report on Form 10-K, which could cause actual results to differ materially from those indicated by such forward-looking statements.*

#### **Overview**

We are a pioneer of highly intelligible, high clarity directed sound technologies and products. We aggressively seek to create markets for our products, and we are increasing our focus on and investment in worldwide sales and marketing activities while we continue to innovate.

Our HSS® H-450 and HSS H-460 products are gaining acceptance from digital signage and networked narrowcasting display providers as in-store networks rapidly grow in retail chains throughout the U.S. and abroad. We have added new LRAD® and NeoPlanar® products and accessories for our customers, including:

a directional acoustic system known as the Remotely Controlled Long Range Acoustic Device (LRAD-R), which is a turnkey security solution that enables users to determine the intent of potential security threats as well as readily communicate over distance (in excess of 500 meters) from a remote location,

the LRAD-Sound Barrier, a hardened vehicle-mounted system for high-profile passenger security, and

the LRAD-Scram Cart, allows for rapid deployment of the LRAD system.

We believe that our products are at price and performance points to attract serious market interest. Accelerating our product sales and revenue growth will require organizational discipline, improved customer focus, and a new, sustained marketing push of our company and products. We



are focused on these areas of our business while also containing costs.

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**Overall Performance for the Third Quarter of Fiscal 2007**

For our third fiscal quarter ended June 30, 2007:

Our revenues for the three months ended June 30, 2007 were \$2,152,571, compared to \$3,164,779 for the three months ended June 30, 2006 (a 32% decrease) primarily due to lower HSS sales.

We recorded a gross profit of \$998,235 for the three months ended June 30, 2007 (46% of revenues), which was \$47,299 lower than the gross profit of \$1,045,534 for the three months ended June 30, 2006 (33% of revenues). Gross profit, in absolute dollars, decreased due to lower sales, but increased as a percentage of sales due to a shift in product mix to LRAD sales and decreased production costs and warranty expense.

Operating expenses decreased from \$2,610,955 for the three months ended June 30, 2006 to \$2,180,240 for the three months ended June 30, 2007 (a 16% decrease) primarily due to a decrease in personnel and related costs and benefits in our general and administrative departments. This reduction was accomplished even though operating expenses for the three months ended June 30, 2007 included \$478,736 of non-cash stock-based compensation expense compared to \$220,478 for the previous year's third quarter.

Our net loss increased from \$849,336 for the three months ended June 30, 2006 to \$1,146,967 for the three months ended June 30, 2007, primarily due to recognition of a favorable unrealized gain of \$669,300 on derivative revaluation in the three months ended June 30, 2006, with no comparable gain in the three months ended June 30, 2007.

Our various technologies are high risk in nature. However, we believe we have a solid technology and product foundation for business growth over the next several years. We have significant new technologies and products in various stages of development. We also believe we have strong market opportunities, particularly given the growth and acceptance of digital signage requiring the use of directed sound products and the continuing global threats to both governments and commerce where our LRAD products have proven to be effective at hailing and notification for force protection.

**Critical Accounting Policies**

We have identified a number of accounting policies as critical to our business operations and the understandings of our results of operations. These are described in our consolidated financial statements located in Item 1 of Part I, Financial Statements, and in Management's Discussion and Analysis of Financial Condition and Results of Operations in our Annual Report of Form 10-K for the year ended September 30, 2006. The impact and any associated risks related to these policies on our business operations is discussed throughout Management's Discussion and Analysis of Financial Condition and Results of Operations when such policies affect our reported and expected financial results.

The methods, estimates and judgments we use in applying our accounting policies, in conformity with generally accepted accounting principles in the United States, have a significant impact on the results we report in our financial statements. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances. The estimates affect the carrying values of assets and liabilities. Actual results may differ from these estimates under different assumptions or conditions.

**Results of Operations for the Three Months Ended June 30, 2007 and 2006**

***Revenues***

Revenues for the three months ended June 30, 2007 were \$2,152,571, representing a 32% decrease from \$3,164,779 in revenues for the three months ended June 30, 2006. Revenues for the three months ended June 30, 2007 included \$2,012,971 of product sales and \$139,600 of contract, license and other revenues. Revenues for the three months ended June 30, 2006 included \$3,086,599 of product sales and \$78,180 of contract, license and other revenues. The decrease in revenue for the three months ended June 30, 2007 compared to the three months ended June 30, 2006 is primarily due to a decrease of \$854,000 of HSS 450 product sales into the digital signage and in-store broadcasting markets from \$1.1 million in the three months ended June 30, 2006 to \$246,000 in the three months ended June 30, 2007. Our revenues are highly dependent on the timing of large orders from a small number of customers. We expect continued uneven quarterly revenues in future periods due

to the lack of established markets for our proprietary products.

In fiscal 2005, we entered into a license agreement which contained multiple elements. Based on our evaluation of the agreement under the guidance of EITF Issue No. 00-21 we determined this arrangement does not qualify for multiple element accounting and revenue is recognized ratably over the three year term of the agreement. For the three months ended June 30, 2007, we recognized \$54,167 in contract revenue representing the ratable earned revenue under the three year agreement. At June 30, 2007, \$22,223 remained unearned under this agreement and has been recorded as deferred revenue. At June 30, 2007, we had aggregate deferred license revenue of \$302,615 representing amounts collected from license agreements in advance of recognized earnings. Although we anticipate additional license revenues in fiscal year 2007 from existing and

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new arrangements, this revenue component is subject to significant variability based on the timing, amount and recognition of new arrangements, if any.

Our order backlog was approximately \$790,000 at June 30, 2007 and approximately \$7,200,000 at June 30, 2006. Our backlog was reduced in the three months ended June 30, 2007 due to an amendment to a contract with a large customer. We have been carrying a backlog related to a contractual arrangement with a customer since 2005. The customer placed an order against this agreement in the quarter ended June 30, 2006, accounting for a significant portion of the revenue reported in the quarter ended June 30, 2006. No orders have been received against this contract since June 30, 2006 and we have continued to support this customer. In the quarter ended June 30, 2007, we amended our agreement with this customer to reduce the committed quantity in order to allow it to obtain financing to support the continued installation of its in-store broadcasting network which includes our product. In exchange for this amendment, we will become an exclusive supplier of audio for any future installations over the next two years. Included in the June 30, 2007 backlog is \$450,000 related to this amended agreement as compared to \$4,185,000 at June 30, 2006. We have not included any amount related to the exclusive relationship as the amount is not determinable at this time. Backlog orders are subject to modification, cancellation or rescheduling by our customers.

***Gross Profit***

Gross profit for the three months ended June 30, 2007 was \$998,235, or 46% of revenues, compared to \$1,045,534 or 33% of revenues, for the three months ended June 30, 2006. The increase in gross profit was principally the result of the increased sales of our LRAD products as well as decreased production and labor costs and warranty expense.

Our products have varying gross margins, so product sales mix will materially affect gross profits. In addition, we continue to make product updates and changes, including raw material and component changes that may impact product costs. We do not believe that historical gross profit margins should be relied upon as an indicator of future gross profit margins.

***Selling, General and Administrative Expenses***

Selling, general and administrative expenses for the three months ended June 30, 2007 decreased \$463,646 to \$1,687,405, or 78% of revenues, compared to \$2,151,051, or 68% of revenues, for the three months ended June 30, 2006. The decrease in selling general and administrative expenses was primarily attributed to \$355,714 for decreased personnel and related expenses, \$94,820 for decreased consulting, primarily sales consultants and \$186,493 for decreased legal and accounting expenses. This was offset by an increase in non-cash compensation of \$235,279 related to SFAS 123(R) for stock options.

We may expend additional resources on marketing our products in future periods which may increase selling, general and administrative expenses. During fiscal year 2006, we incurred a significant amount of outside consultant costs and audit fees to comply with the Sarbanes-Oxley Act (particularly Section 404), relating to management's assessment of internal control over financial reporting. We expect to continue to incur audit fees and other costs at a reduced rate during fiscal 2007 to comply with the Sarbanes-Oxley Act and to improve our internal control over financial reporting and procedures in our accounting organization.

***Research and Development Expenses***

Research and development expenses increased \$32,931 to \$492,835, or 23% of revenues, for the three months ended June 30, 2007, compared to \$459,904, or 15% of revenues, for the three months ended June 30, 2006. This increase in research and development expenses is primarily due to a \$61,731 increase in personnel and related expenses, partially offset by favorable expense reductions for prototypes.

Research and development costs vary period to period due to the timing of projects, the availability of funds for research and development and the timing and extent of use of outside consulting, design and development firms. We completed and introduced significant new products in fiscal year 2006, including our HSS H460 product, our LRAD-R, LRAD Scram Cart and LRAD 100. In fiscal 2007, we completed and introduced an enhanced LRAD-R and continued development of additional products. Based on current plans and engineering staffing, we expect fiscal year 2007 research and development costs to be comparable with fiscal year 2006.

***Share-Based Compensation***

Effective at the beginning of fiscal year 2006, we adopted SFAS 123(R) and elected to adopt the modified prospective application method. SFAS No. 123(R) requires us to use a fair-valued based method to account for share-based compensation. Accordingly, share-based compensation cost is measured at the grant date, based on the fair value of the



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award, and is recognized as expense over the employees' requisite service period. Total compensation cost for our share-based payments in the third quarter of fiscal 2007 was \$498,743. Cost of revenues, selling, general and administrative expense, and research and development expense in the third quarter of fiscal 2007 include share-based compensation of \$20,007, \$424,540 and \$54,196, respectively. As of June 30, 2007, \$4.4 million of total unrecognized compensation costs related to nonvested awards is expected to be recognized over a weighted average period of 3.9 years. See Note 10 to interim consolidated financial statements for further discussion.

### ***Loss from Operations***

Loss from operations was \$1,182,005 for the three months ended June 30, 2007, compared to loss from operations of \$1,565,421 for the three months ended June 30, 2006. In spite of reduced sales, the gross profit declined only slightly due to a shift in product mix. In addition, operating expenses have been significantly reduced compared to the prior year period.

### ***Other Income (Expense)***

During the three months ended June 30, 2007, we earned \$89,548 of interest income on our cash balances. During the three months ended June 30, 2006, we earned \$43,900 of interest on our cash balances. During the three months ended June 30, 2007, we incurred \$54,510 of losses on the disposal of fixed assets and patent impairments, compared to a gain of \$3,443 in the three months ended June 30, 2006. During the three months ended June 30, 2006 we recognized \$669,300 of unrealized non-cash gain on derivative revaluation.

### ***Net Loss***

The net loss for the three months ended June 30, 2007 was \$1,146,967, compared to a net loss of \$849,336 for the three months ended June 30, 2006. We had no income tax expense for either of the periods presented.

## **Results of Operations for the Nine Months Ended June 30, 2007 and 2006**

### ***Revenues***

Revenues for the nine months ended June 30, 2007 were \$8,318,192, representing a 27% increase from \$6,553,195 in revenues for the nine months ended June 30, 2006. Revenues for the nine months ended June 30, 2007 included \$7,946,836 of product sales and \$371,356 of contract, license and other revenues. Revenues for the nine months ended June 30, 2006 included \$6,287,812 of product sales and \$265,383 of contract, license and other revenues. The increase in revenues was due to increased sales of LRAD products to a growing number of customers. Our marketing efforts, successful product deployments and extensive product demonstrations have contributed to increased market awareness and customer acceptance of the force protection capabilities of our LRAD products. We expect continued uneven quarterly revenues in future periods due to the lack of established markets for our proprietary products.

In fiscal 2005, we entered into a license agreement which contained multiple elements as further described above. For the nine months ended June 30, 2007, we recognized \$162,500 in contract revenue representing the ratable earned revenue under the three year agreement.

### ***Gross Profit***

Gross profit for the nine months ended June 30, 2007 was \$4,075,650, or 49% of revenues, compared to \$2,297,886, or 35% of revenues, for the nine months ended June 30, 2006. The increase in gross profit was principally the result of the increased sales of our LRAD products as well as decreased production and labor costs and warranty expense.

Our products have varying gross margins, so product sales mix will materially affect gross profits. In addition, we continue to make product updates and changes, including raw material and component changes that may impact product costs. We do not believe that historical gross profit margins should be relied upon as an indicator of future gross profit margins.

### ***Selling, General and Administrative Expenses***

Selling, general and administrative expenses for the nine months ended June 30, 2007 decreased \$1,105,417 to \$5,415,771, or 65% of revenues, compared to \$6,521,188, or 100% of revenues, for the nine months ended June 30, 2006. The decrease in selling general and administrative expenses was primarily attributed to \$869,103 for decreased personnel and related expenses, \$155,613 for decreased travel expenses, \$331,301 for decreased consulting expense, primarily for sales personnel, and \$467,020 for decreased legal and accounting expenses. This reduction was

offset by an increase of \$265,191 for non-cash compensation related to SFAS 123(R) for stock options, and \$520,948 in legal and accounting fees, which we recorded in the six months ended March 31, 2007 associated with a voluntary review of historical stock option and stock

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grants and the related restatement of financial statements as more fully described in our Annual Report on Form 10-K for the fiscal year ended September 30, 2006.

We may expend additional resources on marketing our products in future periods which may increase selling, general and administrative expenses.

### ***Research and Development Expenses***

Research and development expenses increased \$63,036 to \$1,591,150, or 19% of revenues, for the nine months ended June 30, 2007, compared to \$1,528,114, or 23% of revenues, for the nine months ended June 30, 2006. This increase in research and development expenses is primarily due to an \$111,235 increase in personnel and related expenses, offset by a reduction in prototype expenses.

Research and development costs vary period to period due to the timing of projects, the availability of funds for research and development and the timing and extent of use of outside consulting, design and development firms.

### ***Share-Based Compensation***

Total compensation cost for our share-based payments for the nine months ended June 30, 2007 was \$912,083. Cost of revenues, selling, general and administrative expense, and research and development expense include share-based compensation of \$54,398, \$763,559 and \$94,126, respectively. As of June 30, 2007, \$4.4 million of total unrecognized compensation costs related to nonvested awards was expected to be recognized over a weighted average period of 3.9 years. See Note 10 to interim consolidated financial statements for further discussion.

### ***Loss from Operations***

Loss from operations was \$2,931,271 for the nine months ended June 30, 2007, compared to loss from operations of \$5,751,416 for the nine months ended June 30, 2006. The decrease in loss from operations resulted primarily from the increase in revenues and gross profit as well as a significant decrease in operating expenses.

### ***Other Income (Expense)***

During the nine months ended June 30, 2007, we earned \$295,852 of interest income on our cash balances and incurred \$32,890 of financing expense for liquidated damages associated with the temporary unavailability of resale registration statements resulting from the filing of our Annual Report on Form 10-K for the fiscal year ended September 30, 2006 past the extended due date of December 29, 2006.

During the nine months ended June 30, 2007, we incurred net losses of \$25,354 on the disposal of fixed assets and patent impairments, compared to a \$48,628 net loss in the three months ended June 30, 2006.

During the nine months ended June 30, 2006, we earned \$189,002 of interest on our cash balances and recognized \$1,362,000 of unrealized non-cash gain on derivative revaluation.

### **Net Loss**

The net loss for the nine months ended June 30, 2007 was \$2,693,663, compared to a net loss of \$4,250,143 for the nine months ended June 30, 2006. We had no income tax expense for either of the periods presented.

### **Liquidity and Capital Resources**

We continue to experience significant negative cash flow from operating activities including developing, introducing and marketing our proprietary sound technologies. We have financed our working capital requirements through cash generated from product sales and from financing activities. Cash at June 30, 2007 was \$6,997,562 compared to \$9,896,342 at September 30, 2006. The decrease in cash was primarily the result of the operating loss, warranty costs previously accrued, increases in inventory, decreases in current liabilities and decreases in accounts payable.

Other than cash and our balance of accounts receivable, we have no other unused sources of liquidity at this time.



Principal factors that could affect the availability of our internally generated funds include:

ability to meet sales projections;

government spending levels;

introduction of competing technologies;

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product mix and effect on margins;

ability to reduce current inventory levels; and

product acceptance in new markets.

Principal factors that could affect our ability to obtain cash from external sources include:

volatility in the capital markets; and

market price and trading volume of our common stock.

Based on our current cash position and our product backlog, and assuming currently planned expenditures and level of operations, we believe we have sufficient cash for operations for the next twelve months. We believe increased sales of LRAD, HSS and NeoPlanar products will continue to contribute cash during the balance of fiscal year 2007 and in fiscal year 2008. However, we operate in a rapidly evolving and often unpredictable business environment that may change the timing or amount of expected future cash receipts and expenditures. Accordingly, there can be no assurance that our sources of funds will be sufficient to meet our liquidity needs or that we will not be required to raise additional funds to meet those needs, including future business expansion, through the sale of equity or debt securities or from credit facilities with lending institutions.

***Cash Flows***

*Operating Activities*

Our net cash used in operating activities was \$3,682,408 for the nine months ended June 30, 2007 compared to \$6,789,479 for the nine months ended June 30, 2006. Cash used in operating activities for the nine months ended June 30, 2007 included the \$2,693,663 net loss decreased by expenses not requiring the use of cash of \$1,144,848 and a \$925,271 decrease in trade accounts receivable, and increased by a \$1,007,755 increase in inventories (net of obsolescence reserve) and prepaid expense and a \$2,051,109 decrease in accounts payable and other accrued expenses. Cash used in operating activities for the nine months ended June 30, 2006 included the \$4,250,143 net loss, reduced by expenses not requiring the use of cash of \$1,343,488 and reduced by \$548,042 for decreased prepaid expense and increased accounts payable and increased by a net realizable gain of \$1,362,000 on derivative revaluation, \$1,831,336 on increased accounts receivable, \$739,984 on increased inventories (net of obsolescence reserve) and \$497,546 on reduced accrued liabilities and warranty.

At June 30, 2007 we had working capital of \$12,057,956, compared to working capital of \$12,658,863 at September 30, 2006.

At June 30, 2007, we had trade accounts receivable of \$1,194,783. This compares to \$2,055,132 in trade accounts receivable at September 30, 2006. The level of trade accounts receivable at June 30, 2007 represented approximately 41 days of revenues compared to 84 days of revenues at September 30, 2006. The decrease in days was due to shipments of products scheduled more evenly throughout the quarter. Terms with individual customers vary greatly. We typically require thirty-day terms from our customers. Our receivables can vary significantly due to overall sales volumes and due to quarterly variations in sales and timing of shipments to and receipts from large customers and the timing of contract payments.

*Investing Activities*

We use cash in investing activities primarily for the purchase of laboratory and computer equipment and software and investment in new patents. Cash used in investing activities for equipment was \$42,273, offset by proceeds from the sale of equipment of \$36,500, and \$357,516 for the nine months ended June 30, 2007 and 2006, respectively. Cash used for investment in new patents was \$70,861 and \$158,083, for the nine months ended June 30, 2007 and 2006, respectively. We anticipate continued capital expenditures for patents during the balance of fiscal year 2007 and in fiscal year 2008. Cash used in investing activities for the nine months ended June 30, 2006 was \$58,265, consisting of a security deposit for our current facilities.

*Financing Activities*

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Cash provided by financing activities for the nine months ended June 30, 2007 was \$860,262, which consisted of net cash proceeds from the exercise of warrants of \$817,662 and cash proceeds from the exercise of stock options of \$42,600. Cash provided by financing activities for the nine months ended June 30, 2006 was \$600,917, which included \$610,940 of net cash proceeds from the exercise of stock options.

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### **Recent Accounting Pronouncements**

A number of new pronouncements have been issued for future implementation as discussed in the footnotes to our interim financial statements. See Note 3 to interim consolidated financial statements for further discussion.

### **Item 3. Quantitative and Qualitative Disclosures about Market Risk.**

Market risk represents the risk of loss that may impact our financial position, results of operations or cash flows due to adverse changes in market prices, including interest rate risk and other relevant market rate or price risks. We do not use derivative financial instruments in our investment portfolio.

We are exposed to some market risk through interest rates, related to our investment of current cash and cash equivalents of approximately \$7 million at June 30, 2007. Based on this balance, a change of one percent in interest rate would cause a change in interest income of \$69,976. The risk is not considered material and we manage such risk by continuing to evaluate the best investment rates available for short-term high quality investments.

### **Item 4. Controls and Procedures.**

We are required to maintain disclosure controls and procedures designed to ensure that material information related to us, including our consolidated subsidiaries, is recorded, processed, summarized and reported within the time periods specified in the SEC rules and forms.

### **Conclusion Regarding the Effectiveness of Disclosure Controls and Procedures**

Under the supervision and with the participation of our management, including our principal executive and financial officer, in connection with filing this amended Quarterly Report on Form 10-Q/A, we conducted an evaluation of our disclosure controls and procedures, as such term is defined under Rules 13a-15(e) and 15d-15(e) promulgated under the Securities Exchange Act of 1934 as of June 30, 2007, the end of the period covered by this report. Based on this evaluation, our principal executive and financial officer concluded that a material weakness existed in our internal control over financial reporting as of June 30, 2007. As a result of this material weakness, our principal executive and financial officer concluded that our disclosure controls and procedures were not effective at the reasonable assurance level as of June 30, 2007.

The material weakness we identified in our internal control over financial reporting as of June 30, 2007 is as follows:

#### **Accounting for Payroll Taxes**

The controls over our accounting for payroll taxes related to certain stock option grants did not operate effectively as of June 30, 2007. A control did not exist to monitor the corrective action to ensure a thorough and timely response prior to the filing of the Form 10-Q for the quarter ended June 30, 2007, or an adequate review process to appropriately assess the amount. As reported in our Annual Report on Form 10-K for the year ended September 30, 2006, we corrected errors in the reporting of stock options, which resulted in additional payroll tax liabilities of \$200,601 being recorded. During the Company's third quarter ended June 30, 2007, we revised our estimated payroll tax liability related to this matter to \$65,000 prior to completing a thorough analysis of the payroll tax matter. Following extensive subsequent analysis by the Company, we determined that the reduction of the estimated payroll tax liability recorded during the fiscal third quarter resulted in an understatement of the payroll tax liability as of June 30, 2007 in the amount of \$135,601 based on the final amended payroll tax filings and due to an increase for estimated penalties and interest that we now believe may be assessed. Because we did not file amended payroll tax returns or complete a thorough analysis prior to the quarter ended June 30, 2007, we were unable to estimate the appropriate payroll tax liability as of the end of the quarter. This resulted in the need for a restatement for the quarter and nine months ended June 30, 2007 on this Quarterly Report on Form 10-Q/A to increase the estimate for payroll taxes by \$135,601. Specifically, effective controls, including monitoring, were not designed and in place to assure the timely filing of returns and provide for a better estimate of the tax liability.

#### **Remediation Efforts**

Remediation on this material weakness was initiated in the quarter ended September 30, 2007 and we believe that the material weakness related to our accounting for payroll taxes has been remediated as of the filing of this Quarterly Report on Form 10-Q/A. Remediation measures include the following:

A more effective monitoring process has been established for management to monitor and report on any control issues, and any other significant regulatory or other matter outside the normal scope of business, that have not yet been resolved. A report of these matters will be prepared by the Chief Financial Officer to the Chief Executive Officer and included as part of management's quarterly review with the Audit Committee.

Amended payroll tax returns were filed on December 11, 2007 and management has amended the third quarter Form 10-Q and quarterly consolidated financials statements contained therein to reflect the current estimated payroll tax liability as of the end of the third fiscal quarter.

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### **Changes in Internal Control over Financial Reporting**

We reported three material weaknesses in our Annual Report on Form 10-K for the fiscal year ended September 30, 2006. We implemented corrective action to remediate the previously reported material weaknesses. Management believes these material weaknesses were remediated during the six months ended March 31, 2007.

There were no changes in our internal control over financial reporting during our fiscal quarter ended June 30, 2007 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting, except as mentioned above.

Our process for evaluating controls and procedures is continuous and encompasses constant improvement of the design and effectiveness of established controls and procedures and the remediation of any deficiencies which may be identified during this process.

## **PART II. OTHER INFORMATION**

### **Item 1. Legal Proceedings.**

We may at times be involved in litigation in the ordinary course of business. We will also, from time to time, when appropriate in management's estimation, record adequate reserves in our financial statements for pending litigation. Currently, there are no pending material legal proceedings to which we a party or to which any of our property is subject.

### **Item 1A. Risk Factors.**

Information regarding risk factors appears in the first paragraph in Part I Item 2 of this Form 10-Q and in Part I Item 1A of our Annual Report on Form 10-K for the fiscal year ended September 30, 2006 (the "2006 10-K"). There have been no material changes from the risk factors previously disclosed in the 2006 10-K.

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

None.

### **Item 3. Defaults Upon Senior Securities.**

Not applicable.

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

We held our Annual Meeting of Shareholders on May 9, 2007. The matters voted upon at the meeting included (a) the election of all five directors, (b) ratification of the selection of Swenson Advisors, LLP as the Company's independent registered public accounting firm for our fiscal year ending September 30, 2007, (c) approval of amendments to the American Technology Corporation 2005 Equity Incentive Plan to increase the plan reserve by 1,750,000 new shares and to increase the limit of the number of shares that may be granted to one award recipient within any calendar year under the 2005 Equity Incentive Plan to 1,000,000, which limit applies to initial service and to continuing service and (d) approval of certain terms of our August 2006 financing wherein we sold 4,870,512 shares of common stock at a purchase price of \$1.95 and issued a warrant to each investor containing a provision which provided for the adjustment of the exercise price of the warrant under specified circumstances. The votes cast with respect to these matters were as follows:

Election of Directors

<b>Nominee</b>	<b>Number of shares Voted For</b>	<b>Number of shares Withheld</b>
Elwood G. Norris	27,245,642	355,380
Thomas R. Brown	27,338,016	263,006
Daniel Hunter	27,305,706	295,316
Raymond C. Smith	26,754,874	846,148
Laura M. Clague	27,343,455	257,567

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2. Proposal to ratify the selection of Swenson Advisors, LLP as our independent registered public accounting firm for our fiscal year ending September 30, 2007.

For	Against	Abstain	Broker - No Vote
27,306,638	224,734	69,650	

3. Proposal to approve amendments to the American Technology Corporation 2005 Equity Incentive Plan to increase the plan reserve by 1,750,000 new shares and to increase the limit of the number of shares that may be granted to one award recipient within any calendar year under the 2005 Equity Incentive Plan to 1,000,000, which limit applies to initial service and to continuing service.

For	Against	Abstain	Broker - No Vote
13,140,752	1,232,231	966,779	12,261,260

4. Proposal to approve certain terms of the Company's August 2006 financing wherein the Company sold 4,870,512 shares of common stock at a purchase price of \$1.95 and issued a warrant to each investor containing a provision which provided for the adjustment of the exercise price of the warrant under specified circumstances.

For	Against	Abstain	Broker - No Vote
14,372,416	808,909	158,437	12,261,260

**Item 5. Other Information.**

None

**Item 6. Exhibits  
Certifications**

- 10.1 American Technology Corporation 2005 Equity Incentive Plan (as Amended March 15, 2007). Incorporated by reference to Exhibit 10.1 to Current Report on Form 8-K filed on May 14, 2007.+
- 31.1 Certification of Thomas R. Brown, Principal Executive Officer, pursuant to Rule 13a-14(a) or 15d-14(a) of the Securities and Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.\*
- 31.2 Certification of Katherine H. McDermott, Principal Financial Officer, pursuant to Rule 13a-14(a) or 15d-14(a) of the Securities and Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.\*
- 32.1 Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, executed by Thomas R. Brown, Principal Executive Officer and Katherine H. McDermott, Principal Financial Officer.\*

+ Management contract or compensatory plan or arrangement.

\* Filed concurrently herewith.



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**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.

AMERICAN TECHNOLOGY CORPORATION

By: **/s/ Katherine H. McDermott**  
**Katherine H. McDermott, Chief Financial Officer,**  
**(Principal Financial Officer)**

Date: January 4, 2008