BIOLASE TECHNOLOGY INC
Form S-1/A
January 27, 2006
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As filed with the United States Securities and Exchange Commission on January 27, 2006

Registration No. 333-129995

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Amendment No. 2 to

FORM S-1

REGISTRATION STATEMENT

Under

The Securities Act of 1933

BIOLASE TECHNOLOGY, INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware	**3843**	**87-0442441**
(State or Other Jurisdiction of Incorporation or Organization)	**(Primary Standard Industrial Classification Code Number)**	**(I.R.S. Employer Identification Number)**

981 Calle Amanecer

San Clemente, California 92673

(949) 361-1200

(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant s Principal Executive Offices)

Robert E. Grant

President and Chief Executive Officer

BioLase Technology, Inc.

981 Calle Amanecer

San Clemente, California 92673

(949) 361-1200

(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent For Service)

Copy to:

Christopher M. Forrester, Esq.

Pillsbury Winthrop Shaw Pittman LLP

11682 El Camino Real, Suite 200

San Diego, California 92130

(619) 234-5000

Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this registration statement.

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box. x

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ¨

If this form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ¨

If this form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ¨

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. ¨

The Registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, or until this registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

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The information contained in this prospectus is not complete and may be changed. The selling stockholders may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

(SUBJECT TO COMPLETION, DATED JANUARY 26, 2006)

PRELIMINARY PROSPECTUS

487,909 Shares

BIOLASE TECHNOLOGY, INC.

Common Stock

This prospectus relates to the sale of up to 487,909 shares of our common stock by the selling stockholders identified on page 81 of this prospectus. The prices at which the selling stockholders may sell the shares will be determined by the prevailing market for the shares or in negotiated transactions. We will not receive any proceeds from the sale of shares offered under this prospectus.

Our common stock is quoted on the NASDAQ National Market under the symbol BLTI. On January 24, 2006, the last reported sale price of our common stock was $7.32 per share.

The shares of common stock offered or sold under this prospectus involve a high degree of risk. You should carefully consider the Risk Factors beginning on page 2 of this prospectus before purchasing any of the shares of common stock offered under this prospectus.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities, or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

Prospectus dated [ ]

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You should rely only on information contained in this prospectus. We have not authorized any person to provide you with information that differs from what is contained in this prospectus. If any person does provide you with information that differs from what is contained in this prospectus, you should not rely on it. This prospectus is not an offer to sell or the solicitation of an offer to buy any securities other than the securities to which it relates, or an offer of solicitation in any jurisdiction where offers or sales are not permitted. The information contained in this prospectus is accurate only as of the date of this prospectus, even though this prospectus may be delivered or shares may be sold under this prospectus on a later date.

This prospectus refers to brand names, trademarks and trade names we own, as well as those owned by other companies and organizations. *BIOLASE®, Millennium®, Pulsemaster® and WaterLase® are registered trademarks, and LaserSmile, Diolase Plus, HydroPhotonics, LaserPal, MD Flow, YSGG, Soft Touch, WaterLase MD, HydroBeam, OCULASE MD and SensaTouch are trademarks, of BIOLASE Technology, Inc. All other product and company names are registered trademarks or trademarks of their respective companies.*

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BIOLASE TECHNOLOGY, INC.

PROSPECTUS SUMMARY

In this prospectus, the terms BIOLASE, our company, we, our, and us refer to BIOLASE Technology, Inc. and its subsidiaries.

Our Business

We are a medical technology company that develops, manufactures and markets lasers and related products focused on technologies for improved applications and procedures in dentistry and medicine. In particular, our principal products provide dental laser systems that allow dentists, periodontists, endodontists, oral surgeons and other specialists to perform a broad range of dental procedures, including cosmetic and complex surgical applications. Our systems are designed to provide clinically superior performance for many types of dental procedures, with less pain and faster recovery times than are generally achieved with drills, scalpels and other dental instruments. We have clearance from the U.S. Food and Drug Administration, or FDA, to market our laser systems in the United States and also have the necessary approvals to sell our laser systems in Canada, the European Union and certain other international markets.

In May 2002, our common stock was listed and began trading on the NASDAQ National Market under the symbol BLTI. Prior to 2002, our common stock traded on the NASDAQ SmallCap Market.

We are organized as a Delaware corporation. Our principal executive offices are located at 981 Calle Amanecer, San Clemente, California 92673, and our telephone number is (949) 361-1200. We maintain a website at www.biolase.com. Information contained in or that can be accessed through our website is not a part of this prospectus.

The Offering

In January 2005, we acquired certain patents from Diodem, LLC, or Diodem. The transaction was the result of a binding letter of intent the parties entered into in December 2004, or Binding Letter of Intent. The purchase price paid to Diodem was approximately $7.5 million, consisting of approximately $3 million in cash, 361,664 shares of our common stock issued at the closing, 45,208 shares of common stock that are held in escrow and are subject to release on or before July 2006 if certain conditions are satisfied and a five-year warrant to purchase 81,037 shares of our common stock at an exercise price of $11.06 per share. This prospectus relates to the resale of all of the 487,909 shares issued or issuable to Diodem in this transaction, including the shares issuable upon exercise of the warrant. As part of the transaction, we agreed to register the shares for resale by Diodem. The prices at which Diodem may sell the shares will be determined by the prevailing market for the shares or in negotiated transactions. Diodem subsequently assigned the 361,664 shares of common stock not held in escrow and the warrant to purchase 81,037 shares of common stock, to and among the following four parties: (i) Dovel & Luner, LLP; (ii) Lares Research; (iii) Colette Cozean; and (iv) Patrick J. Day.

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FACTORS THAT MAY AFFECT OUR OPERATING RESULTS

An investment in our common stock involves significant risk. You should carefully consider the following risks and all the other information in this prospectus, in addition to other information contained in our other filings with the U.S. Securities and Exchange Commission, or SEC, before you decide to buy our common stock. Our business, financial condition and results of operations could be harmed by any of the following risks. The trading price of our common stock could decline due to any of these risks, and you could lose part or all of your investment.

Risks Relating to Our Business

Dentists and patients may be slow to adopt laser technologies, which could limit the market acceptance of our products.

Our dental laser systems represent relatively new technologies in the dental market. Currently, only a small percentage of dentists use lasers to perform dental procedures. Our future success will depend on our ability to increase demand for our products by demonstrating the potential performance advantages of our laser systems over traditional methods of treatment and over competitive laser systems to a broad spectrum of dentists and patients. Historically, we have experienced long sales cycles because dentists have been, and may continue to be, slow to adopt new technologies on a widespread basis. As a result, we generally are required to invest a significant amount of time and resources to educate customers about the benefits of our products in comparison to competing products and technologies before completing a sale, if any.

Factors that may inhibit adoption of laser technologies by dentists include cost and concerns about the safety, efficacy and reliability of lasers. For example, the selling price of our Waterlase® product is in excess of $50,000, which is substantially above the cost of competing non-laser technologies. In order to make an investment in a Waterlase product, a dentist generally would need to invest time to understand the technology, the benefits of such technology with respect to clinical outcomes and patient satisfaction, and the return on investment of the product. Absent an immediate competitive motivation, a dentist may not feel compelled to invest the time required to learn about the potential benefits of using a laser system. In addition, economic pressure, caused for example by an economic slowdown, changes in healthcare reimbursement or by competitive factors in a specific market, may make dentists reluctant to purchase substantial capital equipment or invest in new technologies. Patient acceptance will depend on the recommendations of dentists and specialists, as well as other factors, including without limitation, the relative effectiveness, safety, reliability and comfort of our systems as compared to other instruments and methods for performing dental procedures. The failure of dental lasers to achieve broad market acceptance would limit sales of our products and have an adverse effect on our business and results of operations.

Fluctuations in our revenue and operating results on a quarterly and annual basis could cause the market price of our common stock to decline.

Our revenue and operating results fluctuate from quarter to quarter due to a number of factors, many of which are beyond our control. Historically, we have experienced fluctuations in revenue from quarter to quarter due to seasonality. Revenue in the first quarter typically is lower than average and revenue in the fourth quarter typically is stronger than average due to the buying patterns of dental professionals. In addition, revenue in the third quarter may be affected by vacation patterns which can cause revenue to be flat or lower than in the second quarter of the year. Notwithstanding this pattern, in 2005, our net revenue has declined each quarter. If our quarterly revenue or operating results fall below the expectations of investors, analysts or our previously stated financial guidance, the price of our common stock could decline substantially. Factors that might cause quarterly fluctuations in our revenue and operating results include, among others, the following:

variation in demand for our products, including seasonality

our ability to research, develop, market and sell new products and product enhancements in a timely manner

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- our ability to control costs
- our ability to control quality issues with our products
- the size, timing, rescheduling or cancellation of orders from distributors
- the introduction of new products by competitors
- the length of and fluctuations in sales cycles
- the availability and reliability of components used to manufacture our products
- changes in our pricing policies or those of our suppliers and competitors, as well as increased price competition in general
- the mix of our domestic and international sales and the risks and uncertainties associated with international business
- costs associated with any future acquisitions of technologies and businesses
- limitations on our ability to use net operating loss carryforwards under the provisions of Internal Revenue Code Section 382 and similar state laws
- developments concerning the protection of our intellectual property rights
- catastrophic events such as hurricanes, floods and earthquakes, which can affect our ability to advertise, sell and distribute our products, including through national conferences held in regions in which these disasters strike
- global economic, political and social events, including international conflicts and acts of terrorism

The expenses we incur are based, in large part, on our expectations regarding future net revenue. In particular, we expect to continue to incur substantial expenses relating to the marketing and promotion of our products. Since many of our costs are fixed in the short term, we may be unable to reduce expenses quickly enough to avoid losses if we experience a decrease in net revenue. Accordingly, you should not rely on quarter-to-quarter comparisons of our operating results as an indication of our future performance.

We may have difficulty achieving profitability and may experience additional losses.

We recorded a net loss of $16.3 million for the nine months ended September 30, 2005, due partly to our professional fees related to the 2004 audit and restated financial statements and our compliance with the Sarbanes-Oxley Act, $2.0 million related to the purchase of a license to use

certain patent rights from Surgilight, including the transaction costs and increased expenses as a result of quality issues with our products that we are addressing. We also experienced a loss in fiscal 2004 of $23.2 million, of which $14.4 million was attributable to the recording of a valuation allowance associated with our deferred tax assets. In order to achieve profitability, we must control our costs and increase net revenue through new sales. Failure to increase our net revenue and decrease our costs could cause our stock price to decline.

Any failure to significantly expand sales of our products will negatively impact our business.

We currently handle a majority of the marketing, distribution and sales of our products. In order to achieve our business objectives, we intend to significantly expand our marketing and sales efforts on a domestic and international basis. We face significant challenges and risks in expanding, training, managing and retaining our sales and marketing teams, including managing geographically dispersed operations. In addition, we rely on independent distributors to market and sell our products in a number of countries outside of the United States. These distributors may not commit the necessary resources to effectively market and sell our products, and they may terminate their relationships with us at any time with limited notice. If we are unable to expand our sales and marketing capabilities domestically and internationally, we may not be able to effectively commercialize our products, which could harm our business and cause the price of our common stock to decline.

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Components used in our products are complex in design and any defects may not be discovered prior to shipment to customers, which could result in warranty obligations, reducing our revenue and increasing our cost.

In manufacturing our products, we depend upon third parties for the supply of various components. Many of these components require a significant degree of technical expertise to design and produce. If we fail adequately to design or if our suppliers fail to produce components to specification, or if the suppliers, or we, use defective materials or workmanship in the manufacturing process, the reliability and performance of our products will be compromised. We have experienced such non-compliance with manufacturing specifications in the past and may continue to experience such in the future, which could lead to higher costs of revenue and thus reduced gross margins.

Our products may contain defects that cannot be repaired easily and inexpensively, and we have experienced in the past and may experience in the future some or all of the following:

- loss of customer orders and delay in order fulfillment
- damage to our brand reputation
- increased cost of our warranty program due to product repair or replacement
- inability to attract new customers
- diversion of resources from our manufacturing and research and development departments into our service department
- legal action

The occurrence of any one or more of the foregoing could materially harm our business.

Our distributors may cancel, reduce or delay orders of our products, any of which could reduce our revenue.

We employ direct sales representatives in certain European countries; however, we rely on independent distributors for a substantial portion of our sales outside of the United States. For the year ended December 31, 2004, revenue to distributors accounted for approximately 13% of our total sales, and no distributor accounted for more than 10% of our revenue. For the nine months ended September 30, 2005, net revenue to distributors accounted for approximately 16% of our total sales, and no distributor accounted for more than 10% of our net revenue. Our ability to maintain or increase our net revenue will depend in large part on our success in developing and maintaining relationships with our distributors. The loss of a number of our distributors or a reduction in, cancellation of or change in the size or timing of orders from our distributors or any problems collecting accounts receivable from our distributors could reduce our net revenue. In addition, we may experience lengthy delays and incur substantial costs if we are required to replace distributors or retain direct sales representatives for such territories in the future.

We must continue to procure materials and components on commercially reasonable terms and on a timely basis to manufacture our products profitably. We have some single-source suppliers.

We have no written supply contracts with our key suppliers; instead, we purchase certain materials and components included in our products from a limited group of suppliers using purchase orders. Our business depends in part on our ability to obtain timely deliveries of materials and components in acceptable quality and quantities from our suppliers. Certain components of our products, particularly specialized components used in our lasers, are currently available only from a single source or limited sources. For example, the crystal, fiber and hand pieces used in our Waterlase system are each supplied by a separate single supplier and from time to time we have experienced quality deficiencies in these materials. Unexpected interruptions in a single source supplier or quality problems in products we received from a supplier create manufacturing delays or product failures, disrupt sales and cause additional expense relating to the procurement of another supplier as well as adversely

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impact our cost of revenue. We may not be successful in managing any shortage, delay of, or quality control issues with respect to materials or components that we experience, and any such event could cause our business and results of operations to suffer. In particular, our gross margins for the nine months ended September 30, 2005 have been adversely impacted by higher manufacturing costs as a result of quality issues in parts supplied by third parties.

We may not be able to compete successfully, which will cause our revenue and market share to decline.

We compete with a number of domestic and foreign companies that market traditional dental products, such as dental drills, as well as companies that market laser technologies in the dental and medical markets, including Hoya ConBio, a subsidiary of Hoya Photonics, OpusDent Ltd., a subsidiary of Lumenis, KaVo, Deka Dental Corporation, Ivoclar Vivadent AG, and Fotona d.d. If we do not compete successfully, our revenue and market share may decline. Some of our competitors have greater financial, technical, marketing or other resources than we have, which may allow them to respond more quickly to new or emerging technologies and to devote greater resources to the acquisition or development and introduction of enhanced products than we can. The ability of our competitors to devote greater financial resources to product development requires us to work harder to distinguish our products through improving our product performance and pricing, protecting our intellectual property, continuously improving our customer support, accurately timing the introduction of new products and developing sustainable distribution channels worldwide. In addition, we expect the rapid technological changes occurring in the healthcare industry to lead to the entry of new competitors, particularly if dental and medical lasers gain increasing market acceptance. We must be able to anticipate technological changes and introduce enhanced products on a timely basis in order to grow and remain competitive. New competitors or technological changes in laser products and methods could cause commoditization of our products, require price discounting or otherwise adversely affect our gross margins and our financial condition.

Rapidly changing standards and competing technologies could harm demand for our products or result in significant additional costs.

The markets in which our products compete are subject to rapid technological change, evolving industry standards, changes in the regulatory environment, and frequent introductions of new devices and evolving dental and surgical techniques. Competing products may emerge which could render our products uncompetitive or obsolete. The process of developing new medical devices is inherently complex and requires regulatory approvals or clearances that can be expensive, time consuming and uncertain. We cannot guarantee that we will successfully identify new product opportunities, identify new and innovative applications of our technology, or be financially or otherwise capable of completing the research and development required to bring new products to market in a timely manner. An inability to expand our product offerings or the application of our technology could limit our growth. In addition, we may incur higher manufacturing costs if manufacturing processes or standards change, and we may need to replace, modify, design or build and install equipment, all of which would require additional capital expenditures.

If we are unable to attract and retain personnel necessary to operate our business, our ability to develop and market our products successfully could be harmed.

We are heavily dependent on our current executive officers and management. The loss of any key employee or the inability to attract or retain qualified personnel, including engineers and sales and marketing personnel, could delay the development and introduction of, and harm our ability to sell our products and harm our reputation. We believe that our future success is highly dependent on the contributions of Robert E. Grant, our President and Chief Executive Officer, Jeffrey W. Jones, our Chief Technology Officer and Richard L. Harrison, our Executive Vice President and Chief Financial Officer. We have employment agreements with each of these individuals that provide us with the ability to terminate their employment at will, subject to certain severance rights; however, their knowledge of our business and industry would be extremely difficult to replace. Our future success also depends on our ability to attract and retain additional qualified management, engineering, sales and marketing, and other highly skilled technical personnel.

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Any problems that we experience with our manufacturing operations may harm our business.

We manufacture our products at our California and German facilities. In order to grow our business, we must significantly expand our manufacturing capabilities to produce the systems and accessories necessary to meet any demand we may experience. We may encounter difficulties in increasing production of our products, including problems involving production capacity and yields, quality control and assurance, component supply and shortages of qualified personnel. In addition, our manufacturing facilities are subject to periodic inspections by the U.S. Food and Drug Administration, or the FDA, as well as various state agencies and foreign regulatory agencies. Our success will depend in part upon our ability to manufacture our products in compliance with the FDA s Quality System regulations and other regulatory requirements. We recently have experienced quality issues with components of our products supplied by third parties. If we do not succeed in manufacturing our products on a timely basis and with acceptable manufacturing costs while at the same time maintaining good quality control and complying with applicable regulatory requirements, our business will be harmed.

Changes in government regulation or the inability to obtain or maintain necessary government approvals could harm our business.

Our products are subject to extensive government regulation, both in the United States and in other countries. To clinically test, manufacture and market products for human use, we must comply with regulations and safety standards set by the FDA and comparable state and foreign agencies. Regulations adopted by the FDA are wide ranging and govern, among other things, product design, development, manufacture and testing, labeling, storage, advertising and sales. Generally, products must meet regulatory standards as safe and effective for their intended use before being marketed for human applications. The clearance process is expensive, time-consuming and uncertain. Failure to comply with applicable regulatory requirements of the FDA can result in an enforcement action which may include a variety of sanctions, including fines, injunctions, civil penalties, recall or seizure of our products, operating restrictions, partial suspension or total shutdown of production and criminal prosecution. The failure to receive or maintain requisite approvals for the use of our products or processes, or significant delays in obtaining such approvals, could prevent us from developing, manufacturing and marketing products and services necessary for us to remain competitive. In addition, unanticipated changes in existing regulatory requirements or the adoption of new requirements could impose significant costs and burdens on us, which could increase our operating expenses and harm our financial condition.

Regulatory proceedings relating to the restatement of our consolidated financial statements could divert management s attention and resources.

We restated our previously issued financial statements in September of 2003 to reflect a change in the timing of revenue recognition for the fiscal years 2000 through 2002 and the quarters ended March 31, 2002 through March 31, 2003. In addition, in July 2005 we restated our consolidated financial statements for the 2002 and 2003 fiscal years, the four quarters of 2003 and the first three fiscal quarters of 2004 due to a number of factors discussed in Note 3 to our audited consolidated financial statements included in our Form 10-K for the year ended December 31, 2004 and included elsewhere in this prospectus. We received informal requests from the SEC voluntarily to provide information relating to the September 2003 restatement of our consolidated financial statements. We provided information to the SEC and if we receive any additional requests for information, we intend to continue to do so. In accordance with its normal practice, the SEC has not advised us when its inquiry might be concluded. If the SEC elects to request additional information from us or commences further proceedings, including as a result of our recent restatement, responding to such requests or proceedings could divert management s attention and resources. Additionally, any negative developments arising from such requests or proceedings could harm our business and cause the price of our common stock to decline.

We may have difficulty managing any growth that we might experience.

If we experience growth in our operations, our operational and financial systems, procedures and controls may need to be expanded, which will place significant demands on our management, distract management from

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our business plan and increase expenses. Our success will depend substantially on the ability of our management team to manage any growth effectively. These challenges may include, among others:

- maintaining our cost structure at an appropriate level based on the revenue we generate
- managing manufacturing expansion projects
- implementing and improving our operational and financial systems, procedures and controls
- managing operations in multiple locations and multiple time zones

In addition, we incur significant legal, accounting, insurance and other expenses as a result of being a public company. The Sarbanes-Oxley Act of 2002, as well as rules subsequently implemented by the SEC and NASDAQ, has required changes in corporate governance practices of public companies. We expect these rules and regulations to increase our legal and financial compliance costs and to make some activities more time-consuming and costly. We also expect these rules and regulations to make it more difficult and more expensive for us to maintain director and officer insurance and, from time to time, we may be required to accept reduced policy limits and coverage or incur significantly higher costs to maintain the same or similar coverage. As a result, it may be more difficult for us to attract and retain qualified persons to serve on our board of directors or as executive officers. We continue to evaluate and monitor developments with respect to these rules, and we cannot predict or estimate the amount of additional costs we may incur or the timing of such costs.

If we fail to secure or protect our intellectual property rights, competitors may be able to use our technologies, which could weaken our competitive position, reduce our revenue or increase our costs.

Our future success will depend, in part, on our ability to obtain and maintain patent protection for our products and technology, to preserve our trade secrets and to operate without infringing the intellectual property of others. We rely on patents to establish and maintain proprietary rights in our technology and products. We currently possess a number of issued patents and patent applications with respect to our products and technology; however, we cannot assure that any additional patents will be issued, that the scope of any patent protection will be effective in helping us address our competition or that any of our patents will be held valid if subsequently challenged. It is also possible that our competitors may independently develop similar products, duplicate our products or design products that circumvent our patents. Additionally, the laws of foreign countries may not protect our products or intellectual property rights to the same extent as the laws of the United States. If we fail to protect our intellectual property rights adequately, our competitive position and financial condition may be harmed.

We may be sued by third parties for alleged infringement of their proprietary rights.

We face substantial uncertainty regarding the impact that other parties intellectual property positions will have on the markets for dental and other medical lasers. The medical technology industry has in the past been characterized by a substantial amount of litigation and related administrative proceedings regarding patents and intellectual property rights. From time to time, we have received, and expect to continue to receive, notices of claims of infringement, misappropriation or misuse of other parties proprietary rights. Some of these claims may lead to litigation. We may not prevail in any future intellectual property infringement litigation given the complex technical issues and inherent uncertainties in litigation. Any claims, with or without merit, may be time-consuming and distracting to management, result in costly litigation or cause product shipment delays. Adverse determinations in litigation could subject us to significant liability and could result in the loss of

proprietary rights. A successful lawsuit against us could also force us to cease selling or redesign products that incorporate the infringed intellectual property. Additionally, we could be required to seek a license from the holder of the intellectual property to use the infringed technology, and it is possible that we may not be able to obtain a license on acceptable terms, or at all. Any of the foregoing adverse events could seriously harm our business.

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We have significant international sales and are subject to risks associated with operating in international markets.

International sales comprise a significant portion of our net revenue and we intend to continue to pursue and expand our international business activities. For the fiscal year 2004, international sales accounted for approximately 19% of our net revenue, as compared to approximately 20% of our net revenue in fiscal year 2003 and approximately 23% of our net revenue in fiscal year 2002. For the nine months ended September 30, 2005, international sales accounted for approximately 28% of our net revenue, as compared to approximately 27% of our net revenue for the same period in 2004. Political and economic conditions outside the United States could make it difficult for us to increase our international revenue or to operate abroad. International operations, including our operations in Germany, are subject to many inherent risks, including among others:

- adverse changes in tariffs and trade restrictions
- political, social and economic instability and increased security concerns
- fluctuations in foreign currency exchange rates
- longer collection periods and difficulties in collecting receivables from foreign entities
- exposure to different legal standards
- transportation delays and difficulties of managing international distribution channels
- reduced protection for our intellectual property in some countries
- difficulties in obtaining domestic and foreign export, import and other governmental approvals, permits and licenses and compliance with foreign laws
- the imposition of governmental controls
- unexpected changes in regulatory or certification requirements
- difficulties in staffing and managing foreign operations
- potentially adverse tax consequences and the complexities of foreign value-added tax systems

We believe that international sales will continue to represent a significant portion of our net revenue, and we intend to expand our international operations further. Our direct net revenue in Europe is denominated principally in Euros, while our net revenue in other international markets is in U.S. dollars. As a result, an increase in the relative value of the dollar against the Euro would lead to less income from sales denominated in

Euros, unless we increase prices, which may not be possible due to competitive conditions in Europe. We could experience losses from European transactions if the relative value of the dollar were to increase in the future. We do not currently engage in any transactions as a hedge against risks of loss due to foreign currency fluctuations, although we may consider doing so in the future.

Net revenue generated from products manufactured at our German facility accounted for 12% of our net revenue for the nine months ended September 30, 2005 and 8% of our net revenue for the comparable period in fiscal year 2004. Expenses relating to our manufacturing operations in Germany are paid in Euros; therefore, an increase in the value of the Euro relative to the dollar would increase the expenses associated with our German manufacturing operations and reduce our earnings. In addition, we may experience difficulties associated with managing our operations remotely and complying with German regulatory and legal requirements for maintaining our manufacturing operations in that country. Any of these factors may adversely affect our future international revenue and manufacturing operations and, consequently, negatively impact our business and operating results. We are currently reviewing our need for manufacturing in Germany and may in the future decrease or eliminate our manufacturing operations there. However, we would retain our ability to manufacture our products in Germany.

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We may not address successfully problems encountered in connection with any future acquisition.

We expect to continue to consider opportunities to acquire or make investments in other technologies, products and businesses that could enhance our capabilities, complement our current products or expand the breadth of our markets or customer base. We have limited experience in acquiring other businesses and technologies. Potential and completed acquisitions and strategic investments involve numerous risks, including, among others:

- problems assimilating the purchased technologies, products or business operations
- problems maintaining uniform standards, procedures, controls and policies
- unanticipated costs associated with the acquisition
- diversion of management s attention from our core business
- adverse effects on existing business relationships with suppliers and customers
- risks associated with entering new markets in which we have no or limited prior experience
- potential loss of key employees of acquired businesses
- increased legal and accounting costs as a result of the rules and regulations related to the Sarbanes-Oxley Act of 2002

If we fail to properly evaluate and execute acquisitions and strategic investments, our management team may be distracted from our day-to-day operations, our business may be disrupted and our operating results may suffer. In addition, if we finance acquisitions by issuing equity or convertible debt securities, our stockholders would be diluted.

If our customers cannot obtain third party reimbursement for their use of our products, they may be less inclined to purchase our products.

Our products are generally purchased by dental or medical professionals who have various billing practices and patient mixes. Such practices range from primarily private pay to those who rely heavily on third party payors, such as private insurance or government programs. In the United States, third party payors review and frequently challenge the prices charged for medical services. In many foreign countries, the prices for dental services are predetermined through government regulation. Payors may deny coverage and reimbursement if they determine that the procedure was not medically necessary, such as a cosmetic procedure, or that the device used in the procedure was investigational. We believe that most of the procedures being performed with our current products generally are reimbursable, with the exception of cosmetic applications, such as tooth whitening. For the portion of dentists who rely heavily on third party reimbursement, the inability to obtain reimbursement for services using our products could deter them from purchasing or using our products. We cannot predict the effect of future healthcare reforms or

changes in financing for health and dental plans. Any such changes could have an adverse effect on the ability of a dental or medical professional to generate a return on investment using our current or future products. Such changes could act as disincentives for capital investments by dental and medical professionals and could have a negative impact on our business and results of operations.

We are party to securities and derivative litigation that distracts our management, is expensive to conduct and seeks a damage award against us.

We and certain of our current and former officers have been named as defendants in several putative shareholder class action lawsuits filed in the United States District Court for the Central District of California. The complaints purport to seek unspecified damages on behalf of an alleged class of persons who purchased our common stock between October 29, 2003 and July 16, 2004. The complaints allege that we and our officers violated federal securities laws by failing to disclose material information about the demand for our products and the fact that we would not achieve the alleged forecasted growth. The claimed misrepresentations include certain

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statements in our press releases and the registration statement we filed in connection with our public offering of stock which closed in March 2004. In addition, three stockholders have filed derivative actions in the state court in California seeking recovery on behalf of BIOLASE, alleging, among other things, breach of fiduciary duties by those individual defendants and members of our board of directors. The second amended complaint was dismissed without prejudice in January 2006, and the court gave the plaintiffs 30 days to amend their complaint. This litigation presents a distraction to our management, is expensive to conduct, and if we are unsuccessful in defending this litigation, may result in damage awards against us that would harm our financial condition and operating results.

Material increases in interest rates may harm our sales.

We currently sell our products primarily to dentists in general practice. These dentists often purchase our products with funds they secure through various financing arrangements with third party financial institutions, including credit facilities and short-term loans. If interest rates continue to increase, these financing arrangements will be more expensive to our dental customers, which would effectively increase the overall cost of owning our products for our customers and, thereby, may decrease demand for our products. Any reduction in the sales of our products would cause our business to suffer.

Product liability claims against us could be costly and could harm our reputation.

The sale of dental and medical devices involves the inherent risk of product liability claims against us. We currently maintain product liability insurance on a per occurrence basis with a limit of $11.0 million per occurrence and $12.0 million in the aggregate for all occurrences. The insurance is subject to various standard coverage exclusions, including damage to the product itself, losses from recall of our product and losses covered by other forms of insurance such as workers compensation. We cannot be certain that we will be able to successfully defend any claims against us, nor can we be certain that our insurance will cover all liabilities resulting from such claims. In addition, there is no assurance that we will be able to obtain such insurance in the future on terms acceptable to us, or at all. Any product liability claims brought against us could harm our reputation and cause our business to suffer.

Our ability to use net operating loss carryforwards may be limited.

Section 382 of the Internal Revenue Code of 1986 generally imposes an annual limitation on the amount of net operating loss carryforwards that may be used to offset taxable income when a corporation has undergone significant changes in its stock ownership. In 2003, we completed an analysis to determine the applicability of the annual limitations imposed by Section 382 caused by previous changes in our stock ownership and determined that such limitations should not be significant. Based on our analysis, we believe that, as of December 31, 2004, approximately $39.0 million of net operating loss carryforwards were available to us for federal income tax purposes. Of this amount, approximately $34.5 million is available to offset federal taxable income or the taxable income generated in 2005 or in future years, if any. Additional net operating loss carryforwards will become available at the rate of approximately $1.0 million per year for the years 2005 through 2009. However, any ownership changes qualifying under Section 382 including changes resulting from or affected by our public offering or our stock repurchase plan may adversely affect our ability to use our remaining net operating loss carryforwards. If we lose our ability to use net operating loss carryforwards, any income we generate will be subject to tax earlier than it would be if we were able to use net operating loss carryforwards, resulting in lower profits.

Our business is capital intensive and the failure to obtain capital could require that we curtail capital expenditures.

To remain competitive, we must continue to make significant investments in the development of our products, the expansion of our sales and marketing activities and the expansion of our operating and management infrastructure as we increase sales domestically and internationally. We expect that substantial capital will be required to expand our operations and fund working capital for anticipated growth. We may need to raise

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additional funds through further debt or equity financings, which may affect the percentage ownership of existing holders of common stock and which may have rights, preferences or privileges senior to those of the holders of our common stock or may be issued at a discount to the market price of our common stock thereby resulting in dilution to our existing stockholders. We may not be able to raise additional capital on reasonable terms, or at all. If we cannot raise the required capital when needed, we may not be able to satisfy the demands of existing and prospective customers and may lose revenue and market share.

The following factors among others could affect our ability to obtain additional financing on favorable terms, or at all:

- our results of operations
- general economic conditions and conditions in the electronics industry
- the perception of our business in the capital markets
- our ratio of debt to equity
- our financial condition
- our business prospects
- interest rates

If we are unable to obtain sufficient capital in the future, we may have to curtail our capital expenditures. Any curtailment of our capital expenditures could result in a reduction in net revenue, reduced quality of our products, increased manufacturing costs for our products, harm to our reputation, reduced manufacturing efficiencies or other harm to our business.

We have adopted anti-takeover defenses that could delay or prevent an acquisition of our company and may affect the price of our common stock. Certain provisions of our certificate of incorporation, and the existence of our stockholder rights plan, could make it difficult for any party to acquire us, even though an acquisition might be beneficial to our stockholders, and could limit the price that investors might be willing to pay in the future for shares of our common stock.

In December 1998, we adopted a stockholder rights plan pursuant to which one preferred stock purchase right was distributed to our stockholders for each share of our common stock held. In connection with the stockholder rights plan, the Board of Directors has designated 500,000 shares of Series B Junior Participating Cumulative Preferred Stock. If any party acquires 15% or more of our outstanding common stock while the stockholder rights plan remains in place (*i.e.*, if such party does not negotiate with the Board of Directors, which has the power to redeem the rights and terminate the plan), the holders of these rights (other than the party acquiring the 15% position) will be able to purchase shares of our common stock (or other securities or assets) at a discounted price, causing substantial dilution to the party acquiring the 15% position. Following the acquisition of 15% or more of our stock by any person (without a redemption of the rights or a termination of the stockholder rights plan by the Board of Directors), if we are acquired by or merged with any other entity, holders of these rights (other than the party acquiring the 15% position) will also be able to purchase shares of common stock of the acquiring or surviving entity if the stockholder

rights plan continues to remain in place.

In addition, under our certificate of incorporation, the Board of Directors has the power to authorize the issuance of up to 500,000 shares of preferred stock that is currently undesignated, and to designate the price, rights, preferences, privileges and restrictions, including voting rights, of those shares without further vote or action by the stockholders. Accordingly, our Board of Directors may issue preferred stock with terms that could have preference over and adversely affect the rights of holders of our common stock. The issuance of any such preferred stock may:

- delay, defer or prevent a change in control of our company
- adversely affect the voting and other rights of the holders of our common stock

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discourage acquisition proposals or tender offers for our shares without the advance approval of the Board of Directors, including bids at a premium over the market price for our common stock

Our common stock could be diluted by the conversion of outstanding convertible securities.

We have issued and will continue to issue outstanding convertible securities in the form of options and warrants as incentive compensation for services performed by our employees, directors, consultants and others. As of September 15, 2005 we had options to purchase 3,682,000 shares of our common stock outstanding, of which options to purchase 2,648,000 shares of common stock were exercisable. In addition, we have issued warrants to purchase an aggregate of 81,037 shares of common stock at an exercise price of $11.06 per share, which shares are being registered for resale in the registration statement of which this prospectus forms a part. If these options or warrants were exercised, it would dilute the ownership of our stock and could adversely affect our common stock s market price.

Our financial outlook could be affected by changes in the accounting rules which govern the recognition of stock-based compensation expenses.

We measure compensation expense for our employee stock compensation plans under the intrinsic value method of accounting prescribed by Accounting Principles Board Opinion No. 25, Accounting for Stock Issued to Employees. Under this method, we recognized no compensation charges related to stock compensation plans because the exercise price of all options granted under these plans was equal to the fair market value of the underlying common stock on the grant date, and therefore no stock-based employee compensation cost is recognized in the consolidated statements of operations. The Financial Accounting Standards Board has announced changes to accounting rules concerning the recognition of stock option compensation expense. Beginning in the first quarter of fiscal 2006 when these changes are expected to be implemented, we and other companies will be required to measure compensation expense using the fair value method, which will adversely affect our results of operations by increasing our compensation expenses by the additional amount of such stock option charges.

Our internal controls and procedures need to be improved.

Management is responsible for establishing and maintaining adequate internal control over financial reporting. Our internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with generally accepted accounting principles. In making its assessment of internal control over financial reporting as of December 31, 2004, management used the criteria described in Internal Control Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). A material weakness is a control deficiency, or combination of control deficiencies, that results in a more than remote likelihood that a material misstatement of the annual or interim financial statements will not be prevented or detected.

Management determined that material weaknesses in our internal control over financial reporting existed as of December 31, 2004, and these material weaknesses contributed to the restatement of our consolidated financial statements for the full 2002 fiscal year, the first, second, third and fourth quarters of 2003, the full 2003 fiscal year and the first, second and third fiscal quarters of 2004. These material weaknesses are discussed in this prospectus under the section Management s Discussion and Analysis Controls and Procedures. Because of these material weaknesses, management concluded that our internal control over financial reporting was not effective as of December 31, 2004 based on the criteria of the Internal Control Integrated Framework issued by COSO. Further, the material weaknesses identified resulted in an adverse opinion by our independent registered public accounting firm on the effectiveness of our internal control over financial reporting. Our management also determined that we had a number of significant deficiencies as of December 31, 2004. Subsequently in 2005, we have identified an additional material weakness as a result of our internal controls not operating effectively during the nine months ended September 30, 2005 related to our

inventory control.

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If we are unable to substantially improve our internal controls, our ability to report our financial results on a timely and accurate basis will continue to be adversely affected, which could have a material adverse affect on our ability to operate our business. If we fail to adequately remediate our material weaknesses by the end of our fiscal year, our management will be required to conclude that our internal control over financial reporting is ineffective. In addition, if we fail to remediate our significant deficiencies in our fiscal year, our management likely will be required to conclude that those significant deficiencies are also material weaknesses. Please see the section in this prospectus called Management s Discussion and Analysis - Controls and Procedures for more information regarding the status of our remedial measures with respect to the material weaknesses in our internal controls described in Management s Report on Internal Control over Financial Reporting. The costs of remediating such deficiencies in our internal controls will adversely affect our results of operations. In addition, even after the remedial measures discussed in this prospectus under the section called Management s Discussion and Analysis Controls and Procedures are fully implemented, our internal control will not prevent all potential error and fraud, because any control system, no matter how well designed, can only provide reasonable and not absolute assurance that the objectives of the control system will be achieved.

Our failure to comply with certain conditions required for our common stock to be listed on the NASDAQ National Market could result in the delisting of our common stock from the NASDAQ National Market.

As a result of our failure to timely file our Annual Report on Form 10-K for the fiscal year ended December 31, 2004 and our Quarterly Reports on Forms 10-Q for the fiscal quarters ended March 31, 2005 and June 30, 2005, and certain required restatements of our financial statements for prior periods, we were not in full compliance with NASDAQ Marketplace Rule 4310(c)(14), which requires us to make, on a timely basis, all filings with the SEC required by the Securities Exchange Act of 1934. We are required to comply with NASDAQ Marketplace Rule 4310(c)(14) as a condition for our common stock to continue to be listed on the NASDAQ National Market.

In April 2005, we received a notification from NASDAQ with respect to the late Form 10-K, and in July 2005, the NASDAQ granted us an extension of time until August 1, 2005 in which to file our Form 10-K, the restatements with respect to our historical financial statements, our Form 10-Q for the first quarter ended March 31, 2005, our Form 10-Q for the second quarter ended June 30, 2005 and to otherwise meet all necessary listing standards of the NASDAQ Market. On July 19, 2005, we filed (i) our Form 10-K for the fiscal year ended December 31, 2004 which included consolidated financial statements for the year ended December 31, 2004 and restated consolidated financial statements as of December 31, 2003 and the two years then ended and (ii) Forms 10-Q/A for the fiscal quarters ended March 31, 2004, June 30, 2004 and September 30, 2004 which included restated financial statements for the prior comparative periods as well. In July 2005, we requested an additional extension of time from NASDAQ in which to file our Form 10-Q for the fiscal quarter ended March 31, 2005 and our Form 10-Q for the second quarter ended June 30, 2005. In August 2005, we received additional notices from NASDAQ regarding the late filing of the first quarter Form 10-Q and granting us the requested extension of time until September 30, 2005 in which to file both our first quarter Form 10-Q and our second quarter Form 10-Q, and to otherwise meet all necessary listing standards. On September 30, 2005 we filed our Form 10-Q for the first and second quarter of 2005, and subsequently NASDAQ confirmed that we are in compliance with the continued listing requirements.

If we are unable to maintain compliance with the conditions for continued listing required by NASDAQ, then our shares of common stock are subject to delisting from the NASDAQ Market. If our shares of common stock are delisted from the NASDAQ Market, they may not be eligible to trade on any national securities exchange or the over-the-counter market. If our common stock is no longer traded through a market system, it may not be liquid, which could affect its price. In addition, we may be unable to obtain future equity financing, or use our common stock as consideration for mergers or other business combinations.

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Risks Relating to This Offering

Our common stock price has been volatile, which could result in substantial losses for stockholders.

Our common stock is currently traded on the NASDAQ National Market and has limited daily trading volume. The trading price of our common stock has been and may continue to be volatile. The market for technology companies, in particular, has at various times experienced extreme volatility that often has been unrelated to the operating performance of particular companies. These broad market and industry fluctuations may significantly affect the trading price of our common stock, regardless of our actual operating performance. The trading price of our common stock could be affected by a number of factors, including, but not limited to, changes in expectations of our future performance, changes in estimates by securities analysts (or failure to meet such estimates), quarterly fluctuations in our sales and financial results and a variety of risk factors, including the ones described elsewhere in this prospectus. Periods of volatility in the market price of a company s securities sometimes result in securities class action litigation. Such litigation would be expensive and would divert management s attention. In addition, if we needed to raise equity funds under adverse conditions, it would be difficult to sell a significant amount of our stock without causing a significant decline in the trading price of our stock. If our stock price drops below approximately $1.00 per share for an extended period of time or we are otherwise unable to satisfy the continued listing requirements of the NASDAQ National Market, our shares could be delisted from the NASDAQ National Market and the marketability, liquidity and price of our common stock would be adversely affected.

Risks Relating to Our Industry

Changes in government regulation or the inability to obtain or maintain necessary government approvals could harm our business.

Our products are subject to extensive government regulation, both in the United States and in other countries. To clinically test, manufacture and market products for human use, we must comply with regulations and safety standards set by the FDA and comparable state and foreign agencies. Regulations adopted by the FDA are wide ranging and govern, among other things, product design, development, manufacture and testing, labeling, storage, advertising and sales. Generally, products must meet regulatory standards as safe and effective for their intended use before being marketed for human applications. The clearance process is expensive, time-consuming and uncertain. Failure to comply with applicable regulatory requirements of the FDA can result in an enforcement action which may include a variety of sanctions, including fines, injunctions, civil penalties, recall or seizure of our products, operating restrictions, partial suspension or total shutdown of production and criminal prosecution. The failure to receive or maintain requisite approvals for the use of our products or processes, or significant delays in obtaining such approvals, could prevent us from developing, manufacturing and marketing products and services necessary for us to remain competitive. In addition, unanticipated changes in existing regulatory requirements or the adoption of new requirements could impose significant costs and burdens on us, which could increase our operating expenses and harm our financial condition.

If our customers cannot obtain third party reimbursement for their use of our products, they may be less inclined to purchase our products.

Our products are generally purchased by dental or medical professionals who have various billing practices and patient mixes. Such practices range from primarily private pay to those who rely heavily on third party payors, such as private insurance or government programs. In the United States, third party payors review and frequently challenge the prices charged for medical services. In many foreign countries, the prices for dental services are predetermined through government regulation. Payors may deny coverage and reimbursement if they determine that the procedure was not medically necessary, such as a cosmetic procedure, or that the device used in the procedure was investigational. We believe that most of the procedures being performed with our current products generally are reimbursable, with the exception of cosmetic applications,

such as tooth whitening. For

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the portion of dentists who rely heavily on third party reimbursement, the inability to obtain reimbursement for services using our products could deter them from purchasing or using our products. We cannot predict the effect of future healthcare reforms or changes in financing for health and dental plans. Any such changes could have an adverse effect on the ability of a dental or medical professional to generate a return on investment using our current or future products. Such changes could act as disincentives for capital investments by dental and medical professionals and could have a negative impact on our business and results of operations.

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INFORMATION REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements that involve a number of risks and uncertainties, These forward-looking statements include, but are not limited to, statements and predictions regarding our operating expenses, sales and operations, anticipated cash needs, capital requirements and capital expenditures, needs for additional financing, use of working capital, plans for future products and services and for enhancements of existing products and services, anticipated growth strategies, ability to attract customers, sources of net revenue, anticipated trends and challenges in our business and the markets in which we operate, the adequacy of our facilities, the impact of economic and industry conditions on our customers and our business, customer demand, our competitive position, the outcome of any litigation against us, the perceived benefits of any technology acquisitions, critical accounting policies and the impact of recent accounting pronouncements. Additional forward-looking statements include, but are not limited to, statements pertaining to other financial items, plans, strategies or objectives of management for future operations, our financial condition or prospects, and any other statement that is not historical fact, including any statement which is preceded by the word may, might, will, intend, should, could, can, would, expect, believe, estimate, p or similar words. For all of the foregoing forward-looking statements, we claim the protection of the Private Securities Litigation Reform Act of 1995. Actual events or results may differ materially from our expectations. Important factors that could cause actual results to differ materially from those stated or implied by our forward-looking statements include, but are not limited to, the impact of changes in demand for our products, our effectiveness in managing manufacturing costs and expansion of our operations, the impact of competition and of technological advances, and the risks set forth under Risk Factors. These forward-looking statements represent our judgment as of the date hereof. We undertake no obligation to revise or update publicly any forward-looking statements for any reason.

The information contained in this prospectus is not a complete description of our business or the risks associated with an investment in our common stock. We urge you to carefully review and consider the various disclosures made by us in this prospectus and in our other reports filed with the SEC.

USE OF PROCEEDS

The shares of common stock offered by this prospectus will be sold by the selling stockholders, and the selling stockholders will receive all of the proceeds from sales of those shares. Accordingly, we will not receive any of the proceeds from sales of the shares offered by this prospectus.

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SELECTED CONSOLIDATED FINANCIAL DATA

The following selected consolidated financial data should be read in conjunction with our consolidated financial statements and related notes contained elsewhere in this prospectus, as well as the section titled Management s Discussion and Analysis of Financial Condition and Results of Operations.

See Note 3 to the 2004 Consolidated Financial Statements in this prospectus for more detailed information regarding the restatement of our consolidated financial statements for the years ended December 31, 2003 and 2002.

The following discussion provides information regarding adjustments made to the previously reported consolidated financial information for the years ended December 31, 2001 and 2000:

Our sales tax liability was overstated as of December 31, 2001 due to inaccurate estimates of sales tax. As a result, we recorded an adjustment to decrease general and administrative expense for the sales tax liability in the amount of $78,000.

Our sales tax liability was understated as of December 31, 2000 due to inaccurate estimates of sales tax. As a result, we recorded an adjustment to increase general and administrative expense in the amount of $18,000.

We were late in filing certain sales tax returns and remitting collected amounts from customers to certain states. As a result, we recorded adjustments to increase general and administrative expense for penalties and interest in accordance with applicable state statues in the amount of $83,000 and $31,000 for the years ended December 31, 2001 and 2000, respectively.

The operating results in any period are not necessarily indicative of the results that may be expected for any future period.

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	Years Ended December 31,					Nine Months Ended September 30,	
		(Restated)					(Restated)
	2004	2003(1)	2002	2001	2000	2005	2004
	(in thousands, except per share data)						
Consolidated Statements of Operations Data:							
Net revenue	$ 60,651	$ 48,783	$ 27,257	$ 16,546	$ 9,495	$ 43,022	$ 41,578
Cost of revenue	24,642	17,533	10,403	6,938	4,816	22,067	16,469
Gross profit	36,009	31,250	16,854	9,608	4,679	20,955	25,109
Other income	32	76	63	79		48	48
Operating expenses:							
Sales and marketing	23,126	16,800	10,702	7,314	4,211	18,467	16,713
General and administrative	11,506	5,096	3,566	2,016	1,890	13,230	5,772
Engineering and development	3,576	2,505	1,684	1,520	2,288	5,289	2,523
Patent infringement legal settlement(2)	6,446						
Impairment of intangible asset(3)	747						
Total operating expenses	45,401	24,401	15,952	10,850	8,389	36,986	25,008
(Loss) income from operations	(9,360)	6,925	965	(1,163)	(3,710)	(15,983)	149
Non-operating income (loss)	559	226	86	(123)	(94)	(135)	423
(Loss) income before cumulative effect of change in accounting principle	(8,801)	7,151	1,051	(1,286)	(3,804)		
Cumulative effect of change in accounting principle(4)					(34)		
(Loss) income before income taxes	(8,801)	7,151	1,051	(1,286)	(3,838)	(16,118)	572
Income tax (provision) benefit	(14,413)	11,898				(166)	(228)
Net (loss) income as reported	$ (23,214)	$ 19,049	$ 1,051	$ (1,286)	$ (3,838)	$ (16,284)	$ 344
(Loss) income per share before cumulative effect of change in accounting principle:							
Basic	$ (1.00)	$ 0.91	$ 0.05	$ (0.07)	$ (0.20)	$ (0.71)	$ 0.01
Diluted	$ (1.00)	$ 0.84	$ 0.05	$ (0.07)	$ (0.20)	$ (0.71)	$ 0.01
Cumulative effect of change in accounting principle per share:							
Basic	$	$	$	$	$	$	$
Diluted	$	$	$	$	$	$	$
Net (loss) income per share:							
Basic	$ (1.00)	$ 0.91	$ 0.05	$ (0.07)	$ (0.20)	$ (0.71)	$ 0.01
Diluted	$ (1.00)	$ 0.84	$ 0.05	$ (0.07)	$ (0.20)	$ (0.71)	$ 0.01
Shares used in computing net (loss) income per share:							
Basic	23,181	20,993	19,929	19,510	19,171	22,984	23,380
Diluted	23,181	22,689	21,349	19,510	19,171	22,984	24,475
Cash dividends per share	$ 0.03	$	$	$	$	$ 0.03	$ 0.01

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	Years Ended December 31,					Nine Months Ended September 30,	
		(Restated)					(Restated)
	2004	2003(1)	2002	2001	2000	2005	2004
	(in thousands, except per share data)						
Consolidated Balance Sheet Data:							
Working capital (deficit)	$ 29,950	$ 10,139	$ 983	$ 167	$ (297)	$ 14,173	$ 40,527
Total assets	58,746	44,636	16,048	8,253	6,822	43,764	74,014
Long-term liabilities	3,623	79	142	205	1,175	222	32
Stockholders equity	33,978	31,238	2,686	611	965	22,280	62,333

(1) On May 21, 2003, we acquired the American Dental Laser product line and related dental laser assets of American Medical Technologies, Inc. for approximately $5.8 million. Refer to Note 7 in the notes to the Consolidated Financial Statements.
(2) Refer to Note 10 in the notes to the 2004 Consolidated Financial Statements.
(3) Refer to Note 6 in the notes to the 2004 Consolidated Financial Statements.
(4) The cumulative effect of change in accounting principle was attributable to the adoption of Staff Accounting Bulletin No. 101.

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MANAGEMENT S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion of our results of operations and financial condition should be read together with the consolidated financial statements and the notes to those statements included elsewhere in this prospectus and other information incorporated by reference in this prospectus, if any. This discussion may contain forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from the results anticipated in any forward-looking statements as a result of a variety of factors, including those discussed in Factors That May Affect Our Operating Results and elsewhere in this prospectus.

Restatement of Financial Statements

The following discussion and analysis gives effect to the restatement discussed in Note 3 to our 2004 consolidated financial statements in this prospectus.

Overview

We are the world s leading dental laser company. We are a medical technology company that develops, manufactures and markets lasers and related products focused on technologies for improved applications and procedures in dentistry and medicine. In particular, our principal products provide dental laser systems that allow dentists, periodontists, endodontists, oral surgeons and other specialists to perform a broad range of dental procedures, including cosmetic and complex surgical applications. Our systems are designed to provide clinically superior performance for many types of dental procedures, with less pain and faster recovery times than are generally achieved with drills, scalpels and other dental instruments. We have clearance from the U.S. Food and Drug Administration, or FDA, to market our laser systems in the United States and also have the necessary approvals to sell our laser systems in Canada, the European Union and certain other international markets. We are currently pursuing regulatory approval to market and sell our Waterlase system in Japan. Since 1998, we have sold approximately 4,000 Waterlase systems and more than 5,390 laser systems in over 45 countries.

We offer two categories of laser system products: (i) Waterlase system and (ii) Diode system. Our flagship product category, the Waterlase system, uses a patented combination of water and laser to perform most procedures currently performed using dental drills, scalpels and other traditional dental instruments for cutting soft and hard tissue. We also offer a family of Diode laser system products to perform soft tissue and cosmetic procedures, including tooth whitening.

Waterlase system. We refer to our patented interaction of water with laser as YSGG Laser HydroPhotonics. YSGG is a shortened abbreviation referring to the unique crystal (Er, Cr: YSGG) laser used in the Waterlase, which contains the elements erbium, chromium, yttrium, scandium, gallium and garnet. This unique crystal laser produces energy with specific absorption and tissue interaction characteristics optimized for dental applications. HydroPhotonics refers to the interaction of laser with water to produce energy to cut tissue. Through YSGG Laser HydroPhotonics, the Waterlase system can precisely cut hard tissue, such as bone and teeth, and soft tissue, such as gums, with minimal or no damage to surrounding tissue. The Waterlase system is the best selling dental laser system, and we estimate it currently accounts for a majority of all dental lasers sold worldwide.

Diode system. We also offer a family of Diode system products, which use a semiconductor diode laser to perform soft tissue and cosmetic procedures, including tooth whitening. Our Diode system serves the growing markets for cosmetic and hygiene procedures.

The Diode system, together with our Waterlase system, offer practitioners a broad product line with a range of features and price points. We also manufacture and sell accessories and consumables for our laser systems, such as hand pieces, laser tips and tooth whitening gel. The Waterlase system comprised 84%, 83% and 77% of our total net revenue for the years ended December 31, 2004, 2003 and 2002 respectively. The Diode system

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comprised 11%, 12% and 18% of our total net revenue for the same periods. The Waterlase system comprised 83% and 81% of our net revenue for the nine months ended September 30, 2005 and 2004, respectively. The Diode system comprised 9% and 10% of our net revenue for the same periods.

Principal Factors Considered by Our Management

Among other things, in managing our business, our management is particularly focused on the following factors and considerations:

- the need to ensure that our products are designed to meet existing and anticipated customer needs
- the need to continuously extend our reach of technology
- the need to leverage our intellectual property to expand our end market applications

Critical Accounting Policies

Our discussion and analysis of our financial condition and results of operations are based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires us to make es