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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

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

For the quarterly period ended September 30, 2002

or

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

For the transition period from to

Commission File Number: 0-27488

INCYTE GENOMICS, INC.
(Exact name of registrant as specified in its charter)

Delaware	**94-3136539**
(State or other jurisdiction of incorporation or organization)	**(IRS Employer Identification No.)**

3160 Porter Drive
Palo Alto, California 94304
(Address of principal executive offices)

(650) 855-0555
(Registrant's telephone number, including area code)

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

☒ Yes ☐ No

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act).

☒ Yes ☐ No

The number of outstanding shares of the registrant's Common Stock, $0.001 par value, was 67,930,212 as of September 30, 2002.

INCYTE GENOMICS, INC.

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PART I: FINANCIAL INFORMATION

Item 1: Financial Statements

INCYTE GENOMICS, INC.
Condensed Consolidated Balance Sheets
(in thousands)
(unaudited)

	September 30, 2002	December 31, 2001*
ASSETS		
Current assets:		
Cash and cash equivalents	$ 15,736	$ 43,368
Marketable securities—available-for-sale	437,093	464,535
Accounts receivable, net (1)	14,780	54,038
Prepaid expenses and other current assets (2)	21,700	29,280
Total current assets	489,309	591,221
Property and equipment, net	44,422	47,927
Long-term investments (3)	44,644	45,272
Intangible and other assets, net (4)	24,679	21,139
Total assets	$ 603,054	$ 705,559
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable (5)	$ 7,216	$ 7,347
Accrued compensation	13,095	18,812
Accrued and other current liabilities (6)	16,480	20,934
Deferred revenue	15,516	24,045
Accrued restructuring charges	8,122	14,970
Total current liabilities	60,429	86,108
Convertible subordinated notes	172,143	179,248
Total liabilities	232,572	265,356
Stockholders' equity:		
Common stock	68	67
Additional paid-in capital	712,720	707,412
Deferred compensation	(4,038)	(8,127)
Accumulated other comprehensive income (loss)	(736)	8,990
Accumulated deficit	(337,532)	(268,139)
Total stockholders' equity	370,482	440,203
Total liabilities and stockholders' equity	$ 603,054	$ 705,559

* The condensed consolidated balance sheet at December 31, 2001 has been derived from the audited financial statements at that date.

(1) Includes receivables from companies considered related parties under SFAS 57 of $1.2 million and $10.9 million at September 30, 2002 and December 31, 2001, respectively.

(2) Includes loan receivable from a company considered a related party under SFAS 57 of $1.5 million and $0 million at September 30, 2002 and December 31, 2001, respectively, and prepaid expenses of $0.7 million and $0.9 million at September 30, 2002 and December 31, 2001, respectively.

(3) Includes investments in companies considered related parties under SFAS 57 of $26.1 million and $17.3 million at September 30, 2002 and December 31, 2001, respectively.

(4) Includes loans to executive officers of $1.2 million and $0 million at September 30, 2002 and December 31, 2001, respectively. See Note 4.

(5) Includes accounts payable to companies considered related parties under SFAS 57 of $1.5 million and $0 million at September 30, 2002 and December 31, 2001, respectively.

(6) Includes accruals of payments to companies considered related parties under SFAS 57 of $5.0 million and $0 million at September 30, 2002 and December 31, 2001, respectively.

See accompanying notes

INCYTE GENOMICS, INC.
Condensed Consolidated Statements of Operations
(in thousands, except per share amounts)
(unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2002	2001	2002	2001
Revenues (1)	$ 22,390	$ 57,319	$ 80,463	$164,491
Operating expenses:				
Research and development (2)	47,406	50,662	118,761	161,776
Selling, general and administrative	12,147	17,886	39,063	53,038
Loss on sale of assets	9	5,777	114	5,777
Other expenses	292	—	1,663	—
Total operating expenses	59,854	74,325	159,601	220,591
Loss from operations	(37,464)	(17,006)	(79,138)	(56,100)
Interest and other income, net (3)	1,648	3,003	16,406	21,640
Interest expense	(2,450)	(2,547)	(7,377)	(7,692)
Gain on repurchase of convertible subordinated notes	—	—	1,937	2,386
Gain (loss) on certain derivative financial instruments, net	155	(1,052)	(318)	162
Loss before income taxes and accounting change	(38,111)	(17,602)	(68,490)	(39,604)
Provision for income taxes	300	225	903	705
Loss before accounting change	(38,411)	(17,827)	(69,393)	(40,309)
Cumulative effect of accounting change	—	—	—	2,279
Net loss	$ (38,411)	$ (17,827)	$ (69,393)	$ (38,030)
Basic and diluted net loss per share:				
Loss before accounting change	$ (0.57)	$ (0.27)	$ (1.03)	$ (0.61)
Cumulative effect of accounting change	—	—	—	0.03
Basic and diluted net loss per share	$ (0.57)	$ (0.27)	$ (1.03)	$ (0.58)
Shares used in computing basic and diluted net loss per share	67,740	66,370	67,348	66,064

(1) Includes revenues from transactions with companies considered related parties under SFAS 57 of $0.2 million and $11.0 million for the three months ended September 30, 2002 and 2001, respectively, and revenues of $1.5 million and $23.6 million for the nine months ended September 30, 2002 and 2001, respectively.

(2) Includes expenses from transactions with companies considered related parties under SFAS 57 of $5.1 million and $0.3 million for the three months ended September 30, 2002 and 2001, respectively, and expenses of $10.6 million and $0.3 million for the nine months ended September 30, 2002 and 2001, respectively.

(3) Includes a gain of $0.8 million on conversion of a convertible note from a company considered a related party under SFAS 57 into preferred stock of the related party for the nine months ended September 30, 2002.

See accompanying notes

INCYTE GENOMICS, INC.
Condensed Consolidated Statements of Comprehensive Loss
(in thousands)
(unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2002	2001	2002	2001
Net loss	$(38,411)	$(17,827)	$(69,393)	$(38,030)
Other comprehensive income (loss), net of taxes:				
Unrealized gains (losses) on marketable securities	2,257	(4,107)	(9,490)	(9,566)
Foreign currency translation adjustments	12	48	(236)	35
Other comprehensive income (loss)	2,269	(4,059)	(9,726)	(9,531)
Comprehensive loss	$(36,142)	$(21,886)	$(79,119)	$(47,561)

See accompanying notes

INCYTE GENOMICS, INC.
Condensed Consolidated Statements of Cash Flows
(in thousands)
(unaudited)

	Nine Months Ended September 30,	
	2002	2001
Cash flows from operating activities:		
Net loss	$ (69,393)	$ (38,030)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	16,863	38,029
Gain on repurchase of convertible subordinated notes	(1,937)	(2,386)
Stock compensation	3,409	818
Cumulative effect of accounting change	—	(2,279)
(Gain) loss on derivative financial instruments, net	318	(162)
Realized gain on long-term investments, net	(1,064)	(2,505)
Loss on sale of assets	114	5,777
Impairment of long-term investments	408	9,015
Impairment of assets	8,100	—
Debt instruments and equity received in exchange for goods or services provided	(2,688)	(8,100)
Changes in certain assets and liabilities:		
Accounts receivable	39,258	(9,095)
Prepaid expenses and other assets	(6,373)	(14,685)
Accounts payable	(131)	(9,285)
Accrued and other current liabilities	(17,019)	(942)
Deferred revenue	(8,529)	(3,868)
Net cash used in operating activities	(38,664)	(37,698)
Cash flows from investing activities:		
Purchase of long-term investments	(5,000)	(28,019)
Proceeds from the sale of long-term investments	2,637	4,337
Capital expenditures	(10,487)	(11,494)
Purchases of marketable securities	(573,410)	(733,966)
Sales and maturities of marketable securities	597,379	739,994
Loans to executive officers	(1,150)	—
Other	—	300
Net cash provided by (used in) investing activities	9,969	(28,848)
Cash flows from financing activities:		
Proceeds from issuance of common stock under stock plans	5,916	7,487
Repurchase of convertible subordinated notes	(4,690)	(5,643)
Other	73	—
Net cash provided by financing activities	1,299	1,844
Effect of exchange rate on cash and cash equivalents	(236)	35
Net decrease in cash and cash equivalents	(27,632)	(64,667)
Cash and cash equivalents at beginning of period	43,368	110,155
Cash and cash equivalents at end of period	$ 15,736	$ 45,488

See accompanying notes

INCYTE GENOMICS, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
September 30, 2002
(Unaudited)

1. Organization and business

Incyte Genomics, Inc. (the "Company") was incorporated in Delaware in April 1991. Incyte is a drug discovery company that develops proprietary genomic information and applies its expertise in medicinal chemistry and molecular, cellular and in vivo biology to the discovery of novel small molecule and protein therapeutics. Incyte believes it has created the largest commercial portfolio of issued United States patents covering human, full-length genes and the proteins they encode, and markets this information, as well as genomic and proteomic information, to many of the world's leading pharmaceutical and biotechnology companies and academic research centers. The Company has assembled an experienced and talented drug discovery team that is identifying potential new drug therapies for cancer, inflammatory diseases and other medical conditions.

2. Basis of presentation

The accompanying unaudited consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. The condensed consolidated balance sheet as of September 30, 2002, condensed consolidated statements of operations for the three and nine months ended September 30, 2002 and 2001, condensed consolidated statements of comprehensive income (loss) for the three and nine months ended September 30, 2002 and 2001 and the condensed consolidated statements of cash flows for the nine months ended September 30, 2002 and 2001 are unaudited, but include all adjustments (consisting of normal recurring adjustments) which the Company considers necessary for a fair presentation of the financial position, operating results and cash flows for the periods presented. The balance sheet at December 31, 2001 has been derived from audited financial statements.

Although the Company believes that the disclosures in these financial statements are adequate to make the information presented not misleading, certain information and footnote information normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States have been condensed or omitted pursuant to the rules and regulations of the Securities and Exchange Commission. The accompanying financial statements should be read in conjunction with the financial statements and notes thereto included in the Company's Annual Report on Form 10-K for the year ended December 31, 2001. Results for any interim period are not necessarily indicative of results for any future interim period or for the entire year.

3. Property and equipment

Property and equipment consisted of (in thousands):

	September 30, 2002	December 31, 2001
Office equipment	$ 5,172	$ 4,944
Laboratory equipment	28,026	21,149
Computer equipment	74,444	75,906
Leasehold improvements	34,132	33,433
	141,774	135,432
Less accumulated depreciation and amortization	(97,352)	(87,505)
	$ 44,422	$ 47,927

4. Other assets

In January 2002, in connection with his employment by the Company as President and Chief Scientific Officer, Robert B. Stein received an interest-free loan from the Company in the amount of $750,000 to be used toward the purchase of a residence in California. The loan is evidenced by a promissory note and secured by the residence. On November 26, 2004, 50% of the outstanding principal balance will be forgiven, and the remaining outstanding principal balance of the loan will be forgiven on November 26, 2005, if Dr. Stein is still employed by the Company on those dates. Any acceleration of the loan or termination of Dr. Stein's employment relationship with the Company prior to the then-applicable forgiveness date will terminate and void any remaining right of Dr. Stein to receive any forgiveness of the then-outstanding principal balance of the loan.

In March 2002, in connection with his employment by the Company as Executive Vice President and Chief Drug Discovery Scientist, Brian W. Metcalf received an interest-free loan from the Company in the amount of $400,000 to be used for financing his residence in California. The loan is evidenced by a promissory note and secured by the residence. On February 6, 2003, 25% of the outstanding principal balance will be forgiven, and 1/48 of the principal amount will be forgiven on the last day of each month thereafter, with the remaining outstanding principal balance of the loan forgiven on February 6, 2006, if Dr. Metcalf is still employed by the Company on those dates. Any acceleration of the loan or termination of Dr. Metcalf's employment relationship with the Company prior to the then-applicable forgiveness date will terminate and void any remaining right of Dr. Metcalf to receive any forgiveness of the then-outstanding principal balance of the loan.

During the third quarter of 2002, the Company determined that certain prepaid licences and software were impaired. As such, the Company has recorded an impairment charge of $8.1 million in the three months period ended September 30, 2002.

5. Convertible subordinated notes

In February 2000, in a private placement, the Company issued $200.0 million of convertible subordinated notes, which resulted in net proceeds of approximately $196.8 million. The notes bear interest at 5.5%, payable semi-annually on February 1 and August 1, and are due February 1, 2007. The notes are subordinated to all senior indebtedness, as defined. The notes can be converted at the option of the holder at an initial conversion price of $67.42 per share, subject to adjustment. The Company may, at its option, redeem the notes at any time before February 7, 2003, but only if the Company's stock price exceeds 150% of the conversion price for 20 trading days in a period of 30 consecutive trading days. On or after February 7, 2003 the Company may, at its option, redeem the notes at specific prices. Holders may require the Company to repurchase the notes upon a change in control, as defined.

The Company repurchased on the open market, and retired, $6.7 million and $8.0 million in face value of convertible subordinated notes during the nine months ended September 30, 2002 and 2001, respectively. A gain of $1.9 million and $2.4 million on these transactions was recognized for the nine months ended September 30, 2002 and 2001, respectively. As of September 30, 2002, the Company had repurchased $29.7 million face value of the notes on the open market. All gains on repurchase of convertible subordinated notes are presented as "Gain on repurchase of convertible subordinated notes."

6. Revenue recognition

Revenues are recognized when persuasive evidence of an arrangement exists, delivery has occurred or services have been rendered, the price is fixed and determinable and collectibility is reasonably assured. The Company enters into various types of agreements for access to its databases of information, use of its intellectual property and sale of its custom products and services. Revenues are deferred for fees received before earned or until no further obligations exist.

Revenues from ongoing database agreements are recognized evenly over the access period. Revenues from licenses to the Company's intellectual property are recognized when earned under the terms of the related agreements. Royalty revenues are recognized upon the sale of the products or services to third parties by the licensee or other agreed upon terms.

Revenues from custom products, such as clones and datasets, are recognized upon completion and delivery. Revenues from custom services are recognized upon completion of contract deliverables. Revenues from gene expression microarray services include technology access fees, which are recognized ratably over the access term, and progress payments, which are recognized at the completion of key stages in the performance of the service in proportion to the costs incurred.

Revenues recognized from multiple element contracts are allocated to each element of the arrangement based on the fair values of the elements. The determination of fair value of each element is based on objective evidence from historical sales of the individual element by the Company to other customers. If such evidence of fair value for each element of the arrangement does not exist, all revenues from the arrangement are deferred until such time that evidence of fair value does exist or until all elements of the arrangement are delivered. In accordance with Staff Accounting Bulletin No. 101 ("SAB 101"), when elements are specifically tied to a separate earnings process, revenues are recognized when the specific performance obligation associated with the element is completed. When revenues for an element are not specifically tied to a separate earnings process they are recognized ratably over the term of the agreement. When contracts include non-monetary exchanges, the non-monetary transaction is determined using the fair values of the products and services involved, as applicable.

Revenues received from agreements in which customers paid with equity or debt instruments in their company were $0 million and $2.4 million for the three and nine months ended September 30, 2002 and $0 million and $7.8 million for the three and nine months ended September 30, 2001, respectively. Additionally, revenues received from agreements in which the Company concurrently invested funds in the customer's stock were $0.2 million and $0.6 million for the three and nine months ended September 30, 2002, respectively, and $1.5 million and $12.9 million for the three and nine months ended September 30, 2001, respectively.

Revenues recognized from agreements executed prior to 2002 in which a concurrent commitment was entered into by the Company to purchase goods or services from the other party for the three and nine months ended September 30, 2002 were $1.0 million and $3.0 million, respectively, and $14.0 million and $20.3 million for the same periods in 2001. No transactions in which there was a concurrent commitment by the Company to purchase goods or services were entered into during the three or nine months ended September 30, 2002. Of commitments made in prior periods, the Company expensed $7.9 million and $19.0 million for the three and nine months ended September 30, 2002, respectively, and $3.1 million and $9.6 million for the three and nine months ended September 30, 2001, respectively.

The above transactions were recorded at fair value in accordance with the Company's revenue recognition policy.

For the three months ended September 30, 2002, one customer contributed 15% of total revenues. One customer contributed 14% of total revenues for the three-month period ended September 30, 2001. No customer contributed 10% or more of revenues for the nine months ended September 30, 2002 or 2001.

Three customers comprised 58% of the accounts receivable balance at September 30, 2002. Three customers comprised 48% of the accounts receivable balance at December 31, 2001.

7. Loss per share

Options to purchase 9,176,797 and 8,572,778 shares of common stock were outstanding at September 30, 2002 and 2001, respectively, and subordinated notes convertible into 2,525,957 and 2,625,333 shares of common stock were outstanding at September 30, 2002 and 2001, respectively, but were not included in the computation of diluted net loss per share, as their effect was antidilutive.

8. Segment reporting

The Company's operations are treated as one operating segment, in accordance with FASB Statement No. 131 ("SFAS 131"): drug discovery and development. For the nine months ended September 30, 2002, the Company recorded revenue from customers throughout the United States and in Austria, Belgium, Canada, France, Denmark, Germany, India, Israel, Japan, the Netherlands, Switzerland, and the United Kingdom. Export revenues for the three and nine months ended September 30, 2002 were $6.9 million and $27.6 million, respectively, and $9.6 million and $31.6 million for the three and nine months ended September 30, 2001, respectively.

9. New pronouncements

In August 2002, the FASB issued Statement No. 146, *Accounting for Costs Associated with Exit or Disposal Activities ("SFAS 146").* SFAS 146 supersedes EITF Issue No. 94-3, *Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity (including Certain Costs Incurred in a Restructuring) ("EITF 94-3").* SFAS 146 requires that a liability for a cost associated with an exit or disposal activity be recognized when the liability is incurred. Additionally, SFAS 146 establishes that fair value is the objective for initial measurement of the liability. The provisions of SFAS 146 are effective for exit or disposal activities that are initiated after December 31, 2002.

In April 2002, the FASB issued Statement No. 145, *Rescission of FASB Statements No. 4, 44, and 64, Amendment of FASB Statement No. 13, and Technical Corrections ("SFAS 145").* By rescinding FASB Statement No. 4, *Reporting Gains and Losses from Extinguishment of Debt ("SFAS 4")*, the FASB eliminated the requirement to classify gains and losses from extinguishment of debt as extraordinary items. SFAS 145 indicates that these gains and losses should only be classified as extraordinary if they meet the criteria in APB Opinion No. 30. The adoption of the statement on April 1, 2002 caused the Company to change its classification of all gains and losses from the repurchase of its convertible subordinated notes from "Extraordinary Gain" to "Gain on repurchase of convertible subordinated notes," which is an element of "Other Income".

In October 2001, the FASB issued Statement No. 144, *Accounting for the Impairment of Long-Lived Assets* (*"SFAS 144"*). The FASB's new rules on asset impairment supersede FASB Statement No. 121, *Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to be Disposed of*, and portions of APB Opinion 30, Reporting the Results of Operations. SFAS 144 provides a single accounting model for long-lived assets to be disposed of and significantly changes the criteria that would have to be met to classify an asset as held-for-sale. SFAS 144 also requires expected future operating losses from discontinued operations to be displayed in the period in which the losses are incurred, rather than as of the measurement date as presently required. The adoption of this statement on January 1, 2002 caused the Company to change its classification of all gains and losses on fixed asset disposition from a component of "Interest and other income, net" to a component of operating expenses.

In July 2001, the FASB issued Statement No. 142, *Goodwill and Other Intangible Assets ("SFAS 142").* SFAS 142 requires, among other things, the discontinuance of goodwill amortization and includes provisions for the reclassification of certain existing recognized intangibles as goodwill, reassessment of the useful lives of existing recognized intangibles, and reclassification of certain intangibles out of previously reported goodwill. The adoption of this statement on January 1, 2002 did not have a material impact on the Company's consolidated financial statements; however, it requires disclosure of the effect of the application of SFAS 142 on all periods presented. The reconciliation of reported net income (loss) for the adoption of SFAS 142 is as follows (in thousands, except per share amounts):

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2002	2001	2002	2001
Reported loss before accounting change	$(38,411)	$(17,827)	$(69,393)	$(40,309)
Add back: Goodwill amortization	—	2,082	—	6,244
Add back: Assembled workforce amortization	—	162	—	486
Adjusted loss before accounting change	$(38,411)	$(15,583)	$(69,393)	$(33,579)
Reported net loss	$(38,411)	$(17,827)	$(69,393)	$(38,030)
Add back: Goodwill amortization	—	2,082	—	6,244
Add back: Assembled workforce amortization	—	162	—	486
Adjusted net loss	$(38,411)	$(15,583)	$(69,393)	$(31,300)
Basic and diluted net loss per share:				
Reported loss before accounting change	$ (0.57)	$ (0.27)	$ (1.03)	$ (0.61)
Goodwill amortization	—	0.04	—	0.10
Assembled workforce amortization	—	—	—	—
Adjusted loss before accounting change	$ (0.57)	$ (0.23)	$ (1.03)	$ (0.51)
Reported net loss	$ (0.57)	$ (0.27)	$ (1.03)	$ (0.58)
Goodwill amortization	—	0.04	—	0.10
Assembled workforce amortization	—	—	—	0.01
Adjusted net loss	$ (0.57)	$ (0.23)	$ (1.03)	$ (0.47)

10. Litigation

Invitrogen

On October 17, 2001, Invitrogen Corporation filed a complaint for patent infringement against the Company in the United States District Court for the District of Delaware. On November 21, 2001, the Company filed its answer to Invitrogen's complaint. In addition, the Company asserted seven counterclaims against Invitrogen seeking declaratory relief with respect to the patents at issue, implied license, estoppel, laches, and patent misuse. The Company also seeks its fees, costs, and expenses. Invitrogen filed its answer to the Company's counterclaims on January 9, 2002. The parties are presently engaged in discovery. The Company believes it has meritorious defenses and intends to defend vigorously the suit brought by Invitrogen.

On November 21, 2001, the Company filed a complaint against Invitrogen, as amended on December 21, 2001 and March 7, 2002, in the United States District Court for the Southern District of California alleging infringement of thirteen of the Company's patents. The complaint seeks a permanent injunction enjoining Invitrogen from further infringement of the patents at issue, damages for Invitrogen's conduct, as well as the Company's fees, costs, and interest. The Company further seeks triple damages based on Invitrogen's willful infringement of the Company's patents.

On April 2, 2002, Invitrogen filed its answer to the Company's complaint and brought counterclaims against the Company seeking declaratory judgments that the patents in suit are invalid and not infringed, and that one patent (U.S. patent number 6,110,426) is unenforceable. On April 25, 2002, the Company filed its answer to Invitrogen's counterclaims. On May 24, 2002, Invitrogen withdrew its affirmative defense and counterclaim alleging that the '426 patent is unenforceable.

Invitrogen has represented to the Court that its past sales of the eight GeneStorm cDNA clones charged with infringement of U.S. Patent Nos. 5,633,149, 5,637,462, 5,789,198, 5,817,497, 5,840,535, 5,919,686, 5,925,542 and 5,962,263 were not substantial and that it no longer sells these products. The parties are presently engaged in discovery concerning the RNA amplification and gene expression and the microarray fabrication patents.

The Company believes it has meritorious defenses and intends to defend vigorously the suit brought by Invitrogen. However, the Company's defenses may be unsuccessful. At this time, the Company cannot reasonably estimate the possible range of any loss resulting from this suit due to uncertainty regarding the ultimate outcome. Further, there can be no assurance that any license that may be required as a result of this litigation or the outcome thereof would be made available on commercially acceptable terms, if at all. Regardless of the outcome, the Invitrogen litigation is expected to result in substantial future costs to the Company.

11. Related party transactions

The following summarizes the Company's related party transactions as defined by FASB Statement No. 57, *Related Party Disclosures ("SFAS 57")*. In each of the transactions in which a director of the Company was at the time of the transaction in some way affiliated with the other party to the transaction, such director recused himself from voting on the related party transaction. For the nine months ended September 30, 2002 and 2001, revenues from transactions with companies considered to be related parties under SFAS 57, as defined by SFAS 57, were $1.5 million and $23.6 million, respectively. At September 30, 2002 and December 31, 2001, accounts receivable from related parties, as defined by SFAS 57, were $1.2 million and $10.9 million, respectively.

In March 2001, the Company entered into a LifeSeq Collaboration Agreement, Patent License Agreement, Collaboration and Technology Transfer Agreement and Proteome BioKnowledge Library License Agreement with Genomic Health, Inc. ("Genomic Health"). Randal W. Scott, who served as Chairman of the Board of the Company until November 2001 and as a director of the Company through December 2001, is Chairman of the Board, President and Chief Executive Officer of Genomic Health and owns more than 10% of the outstanding capital stock of Genomic Health. Julian C. Baker, who joined the Company's Board in November 2001, is also a director of Genomic Health and holds shares, directly or beneficially, of both companies. Under the agreements, Genomic Health obtained access to the Company's LifeSeq Gold database and BioKnowledge Library and received licenses to certain of the Company's intellectual property. Amounts Genomic Health is paying the Company under these agreements are similar to those paid to the Company under agreements between the Company and unrelated third party customers. The Company received rights to certain intellectual property that Genomic Health may, in the future, develop. At the same time, the Company purchased shares of Series C Preferred Stock of Genomic Health for an aggregate purchase price of $5.0 million. In addition, in November 2000, the Company purchased shares of Series A Preferred Stock of Genomic Health for an aggregate purchase price of $1.0 million. Under certain circumstances and if Genomic Health so elects, the Company has agreed to purchase in a future offering of Genomic Health's capital stock an aggregate of $5.0 million of the shares being sold in that offering.

In May 2001, the Company entered into a Development and License Agreement with Iconix Pharmaceuticals, Inc. (“Iconix”). Jon S. Saxe, a director of the Company, is Chairman of the Board of Iconix. Roy A. Whitfield, who is Chairman of the Board of the Company, is also a director of Iconix and is serving as the Company’s representative on the board. Under the agreement, Iconix obtained an exclusive license to the Company’s LifeExpress Lead database, access to LifeSeq and ZooSeq databases, licenses to certain of the Company’s intellectual property and use of the Company’s LifeArray expression array technology. Amounts Iconix is paying the Company under these agreements are similar to those paid to the Company under agreements between the Company and unrelated third parties. The Company is the exclusive distributor for the database product developed by Iconix. At the same time, the Company purchased shares of Series E Preferred Stock of Iconix for an aggregate purchase price of $10.0 million. In the first quarter of 2002, the Company purchased $5.0 million of shares of Series F Preferred Stock of Iconix, fulfilling a commitment set forth in the agreements described above. The Company owned more than 10% of the outstanding capital stock of Iconix at September 30, 2002.

In September 2001, the Company entered into a Technology Access for Licensed Reagent Manufacture Agreement with Epoch Biosciences, Inc. (“Epoch”). Frederick B. Craves, a director of the Company, is Chairman of the Board of Epoch and Bay City Capital, of which Dr. Craves is a partner, holds shares of Epoch stock. Dr. Craves also holds shares of Epoch stock directly. Under the agreements, Epoch obtained access to the Company’s LifeSeq Gold and ZooSeq databases and received licenses to certain of the Company’s intellectual property. Amounts Epoch has paid the Company under these agreements are similar to those paid to the Company under agreements between the Company and unrelated third party customers. The Company has identified Epoch as the preferred provider of certain probes to the Company’s users of LifeSeq Gold. Additionally, Epoch will supply the Company with certain probes for internal development purposes.

In September 2001, the Company entered into a Collaboration Agreement, Patent License Agreement and two Unilateral Development and Commercialization Agreements with Medarex, Inc. (“Medarex”). Frederick B. Craves, a director of the Company, is also a director of Medarex and Bay City Capital, of which Dr. Craves is a partner, holds shares of Medarex stock. Under the agreements, Medarex obtained access to the Company’s LifeSeq Gold database and received licenses to certain of the Company’s intellectual property. Amounts Medarex has paid the Company under these agreements are similar to those paid to the Company under agreements between the Company and unrelated third party customers. Additionally, under the terms of the agreements, Medarex and the Company expect to share equally the cost and responsibility of preclinical and clinical development of antibody products. In addition, the two companies plan to jointly commercialize any antibody products resulting from this collaboration.

In January 2002, the Company assigned its lease agreement for its Fremont, California facility to Genospectra, Inc. (“Genospectra”). Frederick B. Craves, a director of the Company, is also a director of Genospectra. The Company does not expect to have any further obligations pursuant to this lease.

In March 2002, the Company converted $3.0 million of convertible notes from Odyssey Pharmaceuticals, Inc. (“Odyssey”) into 1,705,919 shares of Odyssey’s preferred stock, resulting in the Company owning more than 10% of the outstanding capital stock of Odyssey at September 30, 2002. The number of shares received upon conversion reflects the face value of the convertible notes, plus a 15% conversion premium and accrued interest. The Company has recorded a gain on this conversion of $0.8 million.

During the third quarter of 2002, the Company advanced $1.5 million to Maxia Pharmaceuticals, Inc. (“Maxia”) in connection with its exclusive negotiations with Maxia regarding an acquisition or other strategic transaction. Frederick B. Craves, a director of the Company, is a partner of Bay City Capital, which holds shares of Maxia stock. In exchange for the loan, Maxia issued to the Company a $1.5 million senior convertible note that bears interest at 8% per annum and can be converted into Maxia common stock at a set conversion price. See also Note 13.

12. Other Expenses

	Original Charge Recorded in 2001	Accrual Balance as of December 31, 2001	Cash Payments	Non-Cash Charges/ Transfers	Accrual Balance as of September 30, 2002
			(in thousands)		
Restructuring expenses:					
Workforce reduction	$ 8,114	$ 2,888	$ (2,857)	$ (31)	$ —
Equipment and other assets	32,629	—	—	—	—
Lease commitments and other restructuring charges	14,859	12,082	(5,654)	1,694	8,122
Subtotal	55,602	14,970	(8,511)	1,663	8,122
Impairment of goodwill and other intangible assets	68,666	—	—	—	—
Impairment of other long-lived assets	6,104	—	—	—	—
Other expenses	$ 130,372	$ 14,970	$ (8,511)	$ 1,663	$ 8,122

On October 25, 2001, the Company announced a restructuring of its operations in order to focus on its database licensing and partnership programs and its therapeutic drug discovery and development programs. As a part of the restructuring, the Company discontinued its microarray-based gene expression products and services, genomic screening products and services, public domain clone products and related services, contract sequencing services and internal program on single nucleotide polymorphism (SNP) discovery. Consequently, this resulted in the Company recording an expense of $55.6 million related to restructuring activities in the fourth quarter of 2001. In addition, in the fourth quarter of 2001 the Company recorded a reduction in goodwill and other intangible assets and impairment of other long-lived assets totaling $74.8 million. Revenues from exited product lines for the three and nine months ended September 30, 2002 were $0.5 million and $3.7 million, respectively, as compared to $12.1 million and $39.1 million for the three and nine months ended September 30, 2001, respectively.

The workforce reduction charge of approximately $8.1 million was determined based on the estimated severance and fringe benefit charges for approximately 400 employees. These employees primarily worked in the activities being exited as described above and related infrastructure support positions. As of September 30, 2002, all such employees have been terminated as a result of the workforce reduction.

Equipment and other assets that were disposed of or removed from operations were written down to their estimated fair value of $0.7 million, resulting in a charge of $32.6 million in the fourth quarter of 2001. The write-down of equipment and other assets primarily relates to leasehold improvements, computer equipment and related software, lab equipment and office equipment associated with the activities being exited and related infrastructure reductions. Additionally, the write-off of equipment and other assets also includes certain software costs related to products no longer being offered. The Company estimated the fair value of equipment and other assets based on the then current market conditions.

Lease commitments and other restructuring related charges of $14.9 million have been accrued for facilities and equipment leases related to the activities being exited and contract-related provisions and settlement and professional fees. Specifically, the Company is exiting or has exited buildings located in St. Louis, Missouri; Fremont, California; Palo Alto, California; and Cambridge, United Kingdom. The Company estimated the costs based on the contractual terms of agreements and real estate market conditions in the fourth quarter of 2001. It was estimated that it would take the Company six to twelve months to sublease the various properties that are being vacated. The leases related to facilities being exited expire on various dates ranging from May 2003 to March 2007. The $1.7 million increase in this accrual recorded in the nine months ended September 30, 2002 is due primarily to contract-related settlements and facilities lease expenses in excess of amounts estimated in 2001, offset by the release of other restructuring accruals in excess of actual expenses.

As a result of the Company's change in strategic direction and restructuring and, pursuant to SFAS 121, the Company performed an assessment of the carrying value of its goodwill and other intangible assets recorded in connection with its Hexagen Limited ("Hexagen") and Proteome, Inc. ("Proteome") acquisitions. As a result, it was determined that the unamortized goodwill and intangible assets were impaired. Charges of $10.2 million and $58.5 million were charged to operations in the fourth quarter of 2001 to write down the Hexagen and Proteome assets, respectively, to their estimated fair value. The carrying value of these intangible assets was $2.5 million at September 30, 2002.

In reviewing its existing long-lived assets, the Company determined, based on certain impairment indicators, that an asset relating to capitalized software should be analyzed for impairment. As a result of this analysis, it was determined that the net book value of the asset was in excess of future revenues expected from sale of this software reduced by costs to sell. Therefore, it was determined that this capitalized software was impaired and the Company recognized a $6.1 million impairment charge.

The estimates above have been made based upon management's best estimate of the amounts and timing of certain events included in the restructure plan that will occur in the future. It is possible that the actual outcome of certain events may differ from the estimates. Changes will be made to the restructuring accrual at the point that differences become determinable.

13. Subsequent Events

In October 2002, the Company announced that its board of directors authorized the expenditure of up to $30 million to repurchase shares of the Company's common stock in open market and privately negotiated transactions. Through November 4, 2002, the Company repurchased, and retired, 495,000 shares for an aggregate purchase price of $2.3 million.

On November 12, 2002, the Company announced that it entered into a definitive agreement to acquire Maxia Pharmaceuticals, Inc., a privately-held company based in San Diego, California, for up to $28.3 million in cash and stock and up to $14 million in future clinical performance milestone payments. Consummation of the acquisition is subject to certain closing conditions including the receipt of Maxia stockholder approval and clearance from California regulatory authorities. Frederick B. Craves, a director of the Company, is a partner of Bay City Capital, which holds shares of Maxia Stock. Upon execution of the definitive agreement, the Company committed to fund up to an additional $1.4 million of the operating expenses of Maxia until the earlier of the closing of the acquisition or termination of the definitive agreement, as applicable. Such operating expense advances will be secured by a second senior convertible note to be issued by Maxia to the Company, bearing interest at 8% per annum and convertible into Maxia capital stock under certain circumstances at a set conversion price. To the extent the total purchase price is allocated to in process research and development, for which an analysis has not yet been completed, the Company will take a charge in the period that the transaction closes.

On November 12, 2002, the Company announced plans to reduce its expenditures in 2003, primarily in research and development, through a combination of spending reductions, workforce reductions and office consolidations. The plan includes elimination of approximately 37% of the Company's approximately 700 person workforce from its offices in Palo Alto, California, Beverly, Massachusetts, and Cambridge, England and consolidation of its office and research facilities in Palo Alto, California.

PART I: FINANCIAL INFORMATION

Item 2: Management's Discussion and Analysis of Financial Condition and Results of Operations

This Management's Discussion and Analysis of Financial Condition and Results of Operations as of September 30, 2002 and for the three and nine month periods ended September 30, 2002 and 2001 should be read in conjunction with the unaudited condensed consolidated financial statements and notes thereto set forth in Item 1 of this report and the section entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations" in the Company's Annual Report on Form 10-K for the year ended December 31, 2001.

When used in this discussion, the words "expects," "believes," "anticipates," "estimates," "could," "intends," and similar expressions are intended to identify forward-looking statements. These statements, which include statements as to the impact of certain critical accounting policies on our financial results; expected expenses and expenditure levels; expected revenues and sources of revenues; expected uses of net cash; expected losses and net losses; expected expenditures including expenditures on intellectual property, research and development, and strategic investments; the offset of profits from certain products by other expenditures; the adequacy of capital resources; the expected effect of our contractual obligations on our future liquidity and cash flow; our plans to reduce expenditures in 2003 and the expected spending reductions, workforce reductions and office consolidations; the percentage of job losses to be incurred through our expense reduction program; guidance as to the charges to be incurred in connection with the expense reduction program; our strategic investments, including anticipated losses and expenses; costs associated with prosecuting, defending and enforcing patent claims and other intellectual property rights; the size of our intellectual property portfolio and its competitive position; our ability to leverage our intellectual property and genomic information to take a leading position in our drug discovery efforts; our strategy with regard to protecting our intellectual property; the effect of pharmaceutical and biotechnology company consolidations, reduced research and development spending and pricing constraints by pharmaceutical and biotechnology customers; our ability to manage expansion of our therapeutic discovery and development operations, including operations in multiple locations; the closing of our pending acquisition of Maxia Pharmaceuticals, Inc.; future required expertise relating to clinical trials, manufacturing, sales and marketing and for licenses to technology rights; the commercial availability of drugs resulting from our research; and our ability to obtain and maintain product liability insurance; are subject to risks and uncertainties that could cause actual results to differ materially from those projected. These risks and uncertainties include, but are not limited to, those risks discussed below, as well as the extent of utilization of genomic information by the biotechnology and pharmaceutical industries; actual and future consolidations of pharmaceutical and biotechnology companies; continuing trends with respect to reduced pharmaceutical and biotechnology spending; risks relating to the development of new products and their use by our potential collaborators; the impact of technological advances and competition; the number of employees entitled to receive severance benefits or other costs to be recognized in connection with the expense reduction program; our ability to consolidate our facilities and to exit and close facilities upon anticipated timelines; our ability to deliver products and services to our customers effectively with reduced headcount and management and key employee diversion; our ability to obtain and retain customers; competition from other entities; early termination of a database collaboration agreement or failure to renew an agreement upon expiration; the cost of accessing or acquiring technologies developed by other companies; uncertainty as to the scope of coverage, enforceability or commercial protection from patents that issue on gene and other discoveries; whether the conditions to the closing of the Maxia transaction are satisfied or cause a delay to the closing of the transaction or termination of the definitive acquisition agreement; developments in and expenses relating to litigation; the results of businesses in which we have purchased equity; and the matters discussed in "Factors That May Affect Results." These forward-looking statements speak only as of the date hereof. We expressly disclaim any obligation or undertaking to release publicly any updates or revisions to any forward-looking statements contained herein to reflect any change in our expectations with regard thereto or any change in events, conditions or circumstances on which any such statement is based.

All references to "Incyte," "we," "us" or "our" mean Incyte Genomics, Inc. and its subsidiaries.

Incyte, LifeSeq, BioKnowledge and ZooSeq are our registered trademarks. We also refer to trademarks of other corporations and organizations in this document.

Overview

Incyte is a drug discovery company that develops proprietary genomic information and applies its expertise in medicinal chemistry and molecular, cellular and in vivo biology to the discovery of novel small molecule and protein therapeutics. Incyte believes it has created the largest commercial portfolio of issued United States patents covering human, full-length genes and the proteins they encode, and markets this information, as well as genomic and proteomic information, to many of the world's leading pharmaceutical and biotechnology companies and academic research centers. The Company has assembled an experienced and talented drug discovery team that is identifying potential new drug therapies for cancer, inflammatory diseases and other medical conditions.

During 2001, we increased our focus on our therapeutic discovery and development program, and we exited the following activities: microarray products and related services, genomic screening products and services, public domain clone products and related services, contract sequencing services, transgenics products and services and single nucleotide polymorphism, or SNP, discovery services. As a part of the exit of these activities, we have closed certain of our facilities in Fremont, California, Palo Alto, California, St. Louis, Missouri and Cambridge, United Kingdom. In addition to the product lines exited, we made infrastructure and other personnel reductions at our locations resulting in an aggregate workforce reduction of approximately 400 employees. A non-recurring charge for restructure charges and impairment of long-lived assets of $130.4 million was recorded in the fourth quarter of 2001 as a result of the change in focus. This charge was comprised of the following items: $68.7 million—goodwill and intangibles impairment; $55.6 million—nonrecurring restructuring charges (including $32.6 million in equipment and other assets impaired) and $6.1 million—impairment of a long-lived asset. Revenues from exited product lines for the three and nine months ended September 30, 2002 were $0.5 million and $3.7 million, respectively, as compared to $12.1 million and $39.1 million for the three and nine months ended September 30, 2001, respectively. A non-recurring charge for restructuring expenses of $1.7 million was recorded in the nine months ended September 30, 2002, primarily for contract-related settlements and facilities lease expenses in excess of estimated amounts, offset by the release of other restructuring accruals in excess of actual expenses.

On November 12, 2002, the Company announced that it entered into a definitive agreement to acquire Maxia Pharmaceuticals, Inc., a privately-held company based in San Diego, California, for up to $28.3 million in cash and stock and up to $14 million in future clinical performance milestone payments. Consummation of the acquisition is subject to certain closing conditions including the receipt of Maxia stockholder approval and clearance from California regulatory authorities. Frederick B. Craves, a director of the Company, is a partner of Bay City Capital, which holds shares of Maxia stock. Upon execution of the definitive agreement, the Company committed to fund up to an additional $1.4 million of the operating expenses of Maxia until the earlier of the closing of the acquisition or termination of the definitive agreement, as applicable. Such operating expense advances will be secured by a second senior convertible note to be issued by Maxia to the Company, bearing interest at 8% per annum and convertible into Maxia capital stock under certain circumstances at a set conversion price. To the extent the total purchase price is allocated to in process research and development, for which an analysis has not yet been completed, the Company will take a charge in the period that the transaction closes.

On November 12, 2002, the Company announced plans to reduce its expenditures in 2003, primarily in research and development, through a combination of spending reductions, workforce reductions and office consolidations. The expense reduction plan includes elimination of approximately 37% of the Company's workforce from its offices in Palo Alto, California, Beverly, Massachusetts, and Cambridge, England and consolidation of its office and research facilities in Palo Alto, California. As a result of these actions, the Company expects to incur a charge of up to $40 million during the fourth quarter of 2002.

Critical Accounting Policies and Significant Estimates

We believe the following critical accounting policies affect the more significant judgments and estimates used in the preparation of our consolidated financial statements:

- Revenue recognition
- Valuation of long-lived assets
- Accounting for long-term investments
- Restructuring charges

Revenue Recognition. Revenues are recognized when persuasive evidence of an arrangement exists, delivery has occurred or services have been rendered, the price is fixed and determinable and collectibility is reasonably assured. We enter into various types of agreements for access to our information databases, use of our intellectual property and sales of our custom products and services. Revenues are deferred for fees received before earned.

Revenues from ongoing database agreements are recognized evenly over the access period. Revenues from licenses to our intellectual property are recognized when earned under the terms of the related agreements. Royalty revenues are recognized upon the sale of products or services to third parties by the licensee or other agreed upon terms.

Revenues from custom products, such as clones and datasets, are recognized upon completion and delivery. Revenues from custom services are recognized upon completion of contract deliverables. Revenues from gene expression microarray services include: technology access fees, which are recognized ratably over the access term, and progress payments, which are recognized at the completion of key stages in the performance of the service in proportion to the costs incurred.

Revenues recognized from multiple element contracts are allocated to each element of the arrangement based on the fair values of the elements. The determination of fair value of each element is based on objective evidence from historical sales of the individual element by us to other customers. If such evidence of fair value for each element of the arrangement does not exist, all revenue from the arrangement is deferred until such time that evidence of fair value does exist or until all elements of the arrangement are delivered. In accordance with Staff Accounting Bulletin No. 101, ("SAB 101"), when elements are specifically tied to a separate earnings process, revenue is recognized when the specific performance obligation associated with the element is completed. When revenues for an element are not specifically tied to a separate earnings process, they are recognized ratably over the term of the agreement.

When contracts include non-monetary payments, the value of the non-monetary transaction is determined using the fair value of the products and services involved, as applicable. For non-monetary payments involving the receipt of equity in a public entity, the fair value is based on the traded stock price on the date revenue is earned. For non-monetary payments involving the receipt of equity in a privately-held company, fair value is determined either based on a current or recent arm's length financing by the issuer or upon an independent valuation of the issuer.

Valuation of Long-Lived Assets. We assess the impairment of long-lived assets, which includes property and equipment and intangible and other assets, whenever events or changes in circumstances indicate that the carrying value may not be recoverable. Factors we consider important that could indicate the need for an impairment review include the following:

- Significant changes in the strategy of our overall business;
- Significant underperformance relative to expected historical or projected future operating results;
- Significant changes in the manner of use of the acquired assets;
- Significant negative industry or economic trends;
- Significant decline in our stock price for a sustained period; and
- Our market capitalization relative to net book value.

When we determine that the carrying value of long-lived assets may not be recoverable based upon the existence of one or more of the above indicators of impairment, in accordance with SFAS 144, we perform an undiscounted cash flow analysis to determine if impairment exists. If impairment exists, we measure the impairment based on the difference between the asset's carrying amount and its fair value.

Accounting for Long-Term Investments. We hold equity and debt securities and warrants in companies having operations or technology in areas primarily within our strategic focus, some of which are publicly traded and can have volatile share prices. Investments in publicly traded companies are classified as available-for-sale and are adjusted to their fair value each month based on their traded market price with any adjustments being recorded in other comprehensive income. Investments in privately held companies are carried at cost. We monitor the companies' financial results and prospects on a regular basis to determine whether an impairment exists. We record an investment impairment charge when we believe that the investment has experienced a decline in value that is other than temporary. Generally, declines that persist for six months or more are considered other than temporary. Future adverse changes in market conditions or poor operating results of underlying investments could result in additional impairment charges.

Restructuring Charges. The restructuring accrual is comprised primarily of costs to exit facilities related to the product lines exited and workforce reduction charges. The workforce reduction charge was determined based on the estimated severance and fringe benefit charge for identified employees. In calculating the cost to exit the facilities, we estimated for each location the amount to be paid in lease termination payments, the future lease and operating costs to be paid until the lease is terminated, and the amount, if any, of sublease receipts. This required us to estimate the timing and costs of each lease to be terminated, the amount of operating costs, and the timing and rate at which we might be able to sublease the site. To form our estimates for these costs, we performed an assessment of the affected facilities and considered the current market conditions for each site. Our assumptions on either the lease termination payments, operating costs until terminated, or the offsetting sublease receipts may turn out to be incorrect and our actual cost may be materially different from our estimates.

Results of Operations

We recorded a net loss of $38.4 million and $69.4 million and a basic and diluted net loss per share of $0.57 and $1.03 per share for the three and nine months ended September 30, 2002, respectively, as compared to $17.8 million and $38.0 million and $0.27 and $0.58 per share in the corresponding periods in 2001. Loss before cumulative effect of accounting change for the three and nine months ended September 30, 2001 was $17.8 million and $40.3 million, or $0.27 and $0.61 per diluted share, respectively.

Revenues. Revenues for the three and nine months ended September 30, 2002 decreased to $22.4 million and $80.5 million, respectively, compared to $57.3 million and $164.5 million for the corresponding periods in 2001. The decrease in revenues from 2001 was primarily attributable to the impact from the exit of custom genomics products and services, granting of fewer intellectual property licenses and lower database revenues.

Revenues were derived from information products and the wind-down of custom genomics operations. Information product revenues (inclusive of database agreements, partnership programs, licensing activities and custom products) were $21.9 million and $76.8 million for the three and nine months ended September 30, 2002, respectively, as compared to revenues of $45.2 million and $125.4 million for the same periods of the previous year. The decrease in revenues reflects a reduction in spending by pharmaceutical and biotechnology companies due in part to consolidations within these industries, their efforts to reduce spending and pricing constraints. Our database subscription and licensing revenues are impacted by this slowdown as subscribers are being more cautious with their spending than in the past. Revenues for the three and nine months ended September 30, 2002 included $0.5 million and $3.7 million in revenue associated with the wind-down of exited product lines that was announced in the fourth quarter of 2001 as compared to $12.1 million and $39.1 million for the three and nine months ended September 30, 2001.

Revenues received from agreements in which customers paid with equity or debt instruments in their company were $0 million and $2.4 million for the three and nine months ended September 30, 2002 and $0 million and $7.8 million for the three and nine months ended September 30, 2001. Additionally, revenues received from agreements in which we concurrently invested funds in the customer's stock were $0.2 million and $0.6 million for the three and nine months ended September 30, 2002, respectively, and $1.5 million and $12.9 million for the corresponding periods in 2001.

Revenues recognized from agreements executed prior to 2002 in which a concurrent commitment was entered into to purchase goods or services from the other party for the three and nine months ended September 30, 2002 were $1.0 million and $3.0 million, respectively. No transactions in which we had a concurrent commitment were entered into during those periods. Of commitments made in prior periods, we expensed $7.9 million and $19.0 million for the three and nine months ended September 30, 2002, respectively and $3.1 million and $9.6 million for the corresponding periods in 2001. The above transactions were recorded at fair value in accordance with our revenue recognition policy.

Operating Expenses. Total costs and expenses for the three and nine months ended September 30, 2002 decreased to $59.9 million and $159.6 million, respectively, compared to $74.3 million and $220.6 million for the corresponding periods in 2001. This decrease reflects the reduction in expenses derived from the activities and related infrastructure that were exited in the restructuring and the non-recurring restructuring charges and long-lived asset write-downs in 2001, offset by expanded spending in connection with our internal therapeutic discovery and development efforts. As announced on November 12, 2002, we expect to reduce our overall expenditures in 2003, primarily in research and development, through a combination of spending reductions, workforce reductions and office consolidations. We expect these reductions will be partially offset by our increased therapeutic discovery and development spending and expenses that would be incurred upon the closing of our pending acquisition of Maxia.

Research and development expenses. Research and development expenses for the three and nine months ended September 30, 2002 decreased to $47.4 million and $118.8 million, respectively, compared to $50.7 million and $161.8 million for the corresponding periods in 2001. The decrease in research and development expenses was primarily the result of expenses eliminated in the exit of custom genomics product lines, partially offset by increased internal therapeutic discovery and development expenses and certain write-offs related to impaired strategic research and development assets.

Selling, general and administrative expenses. Selling, general and administrative expenses for the three and nine months ended September 30, 2002 decreased to $12.1 million and $39.0 million, respectively, compared to $17.9 million and $53.0 million for the corresponding periods in 2001. The decrease in selling, general and administrative expenses resulted primarily from the exit of custom genomics product lines and infrastructure reductions, partially offset by therapeutic discovery and development expenses not present in 2001. Our selling, general and administrative expenses were also impacted by legal expenses related to our patent infringement lawsuits with Affymetrix and Invitrogen of approximately $1.1 million and $4.1 million in the three and nine months ended September 30, 2002, respectively, and our patent infringement lawsuits with Affymetrix and GeneLogic of $4.1 million and $10.7 million in the three and nine months ended September 30, 2001. We expect that the Invitrogen litigation will result in substantial continuing legal costs to Incyte.

Loss on sale of assets. Loss on sales of assets for the three and nine months ended September 30, 2002 decreased to $0 million and $0.1 million compared to $5.8 million and $5.8 million for the three and nine months ended September 30, 2001, respectively. The loss in 2001 resulted from the divestiture of the transgenics product line and the sale of certain of those assets. The 2002 loss is due to routine disposition of assets in the normal course of business.

Other expenses. Other expenses of $0.3 million and $1.7 million for the three and nine months ended September 30, 2002 relate to an increase in the accrued restructuring charges, which were primarily for contract-related settlements and facilities lease expenses in excess of estimated amounts, offset by the release of other restructuring accruals in excess of actual expenses. As announced on November 12, 2002, our plan to reduce operating expenses in 2003 will result in a fourth quarter 2002 charge.

Interest and Other Income (Expense), Net. Interest and other income (expense), net, for the three months ended September 30, 2002 was $1.6 million compared to $3.0 million for the corresponding period in 2001, and for the nine months ended September 30, 2002 was $16.4 million compared to $21.6 million for the corresponding period in 2001. The decrease for the three months ended September 30, 2002 resulted from a lower average level of interest bearing investments and lower interest rates, an adjustment to the amortization of investment premiums and lower gains on sales of investments, partially offset by a $5.3 million long-term investments impairment charge taken in the same corresponding period in 2001. For the nine months ended September 30, 2002, the decrease was primarily due to a decrease in cash invested and lower interest rates in 2002, an adjustment to the amortization of investment premiums and lower gains on sales of investments, partially offset by a $9.0 million long-term investments impairment charge taken in the same corresponding period in 2001. The activity on discrete investments within our portfolio, in any given quarter, may result in gains or losses on sales or impairment charges.

Interest Expense. Interest expense for the three and nine months ended September 30, 2002 decreased to $2.5 million and $7.4 million, respectively, from $2.5 million and $7.7 million for the corresponding periods in 2001. The decrease was primarily due to the timing impact of the early retirement of $29.7 million face value of our convertible subordinated notes.

Gain on Repurchase of Convertible Subordinated Notes. The gain on repurchase of convertible subordinated notes for the nine months ended September 30, 2002 of $1.9 million, net of $0 tax expense, was due to our repurchase of $6.7 million face value of our 5.5% convertible subordinated notes on the open market in the second quarter of 2002. Gain on repurchase of convertible subordinated notes for the nine months ended September 30, 2001 of $2.4 million, net of $0 tax expense, resulted from our repurchase of $8.0 million face value of the same notes on the open market in the first quarter of 2001. In accordance with SFAS 145, all gains on the repurchase of convertible subordinated notes are presented as “Gain on repurchase of convertible subordinated notes”.

Gain/(Loss) on Certain Derivative Financial Instruments, Net. Gain on certain derivative financial instruments for the three months ended September 30, 2002 of $0.2 million and loss on certain derivative financial instruments for the nine months ended September 30, 2002 of $0.3 million, and loss on certain derivative financial instruments for the three months ended September 30, 2001 of $1.1 million and gain on certain derivative financial instruments for the nine months ended September 30, 2001 of $0.2 million represent the change in fair value of certain long-term investments, specifically warrants held in other companies, in accordance with FASB Statement No. 133 (“SFAS 133”).

Provision for Income Taxes. Due to our net loss in 2002 and 2001, we had a minimal effective annual income tax rate. The income taxes for 2002 and 2001 are primarily attributable to foreign withholding taxes.

Cumulative Effect of Accounting Change. The cumulative effect of an accounting change for the nine months ended September 30, 2001 resulted from the adoption of SFAS 133 in the first quarter of 2001. We recorded the fair value of warrants we hold in certain long-term strategic investments at January 1, 2001, resulting in a gain of $2.3 million, net of $0 tax expense.

Liquidity and Capital Resources

As of September 30, 2002, we had $452.8 million in cash, cash equivalents and marketable securities, compared to $507.9 million as of December 31, 2001. We have classified all of our marketable securities as short-term, as we may choose not to hold them until maturity in order to take advantage of favorable market conditions. Available cash is invested in accordance with our investment policy’s primary objectives of liquidity, safety of principal and diversity of investments.

Net cash used in operating activities was $38.7 million for the nine months ended September 30, 2002 as compared to $37.7 million for the nine months ended September 30, 2001. The increase was primarily due to the increase in net loss in 2002, lower non-cash depreciation and amortization charges as well as higher cash usage for prepaid expenses and other assets and accrued and other current liabilities, including $9.9 million related to restructuring charges, and deferred revenue, all offset by higher cash provided by the decrease in accounts receivable in 2002 as compared to 2001. Net cash generated by operating activities may fluctuate significantly from quarter to quarter due to the timing of large prepayments by database collaborators.

Our investing activities, other than purchases, sales and maturities of marketable securities, have consisted predominantly of capital expenditures and net purchases of long-term investments. Capital expenditures for the nine months ended September 30, 2002 were $10.5 million as compared to $11.5 million in the same period in 2001. The decrease was primarily due to reduced operational needs given our exit of custom genomics product lines, offset by increased spending on our internal therapeutic discovery and development efforts. Long-term investments in companies having operations or technology in areas within our strategic focus were $5.0 million and $28.0 million for the nine months ended September 30, 2002 and 2001, respectively. Net cash used by investing activities may fluctuate significantly from period to period due to the timing of strategic equity investments, capital expenditures and maturity/sales and purchases of marketable securities.

Net cash provided by financing activities was $1.3 million for the nine months ended September 30, 2002 as compared to $1.8 million for the nine months ended September 30, 2001. We repurchased $6.7 million face value of our 5.5% convertible subordinated notes on the open market for $4.7 million in 2002 offset by proceeds from the issuance of common stock under our stock option and employee stock purchase plans of $5.9 million. In 2001, we repurchased $8.0 million face value of our 5.5% convertible subordinated notes on the open market for $5.6 million offset by proceeds from the issuance of common stock under our stock option and employee stock purchase plans of $7.5 million.

In February 2000, in a private placement, we issued $200.0 million of convertible subordinated notes, which resulted in net proceeds of approximately $196.8 million. The notes bear interest at 5.5%, payable semi-annually on February 1 and August 1, and are due February 1, 2007. The notes are subordinated to senior indebtedness, as defined. The notes can be converted at the option of the holder at an initial conversion price of $67.42 per share, subject to adjustment. We may redeem the notes at any time before February 7, 2003, only if our stock exceeds 150% of the conversion price for 20 trading days in a period of 30 consecutive trading days. On or after February 7, 2003, we may redeem the notes at specific prices. Holders may require us to repurchase the notes upon a change in control, as defined. As of September 30, 2002, we had repurchased $29.7 million face value of the notes on the open market.

The following summarizes our future minimum long-term debt payments, future interest payments on long-term debt, and future operating lease payments at September 30, 2002 and the effect those obligations are expected to have on our liquidity and cash flow in future periods (in millions):

	Total	Less Than 1 Year	Years 1–3	Years 4–5	Over 5 Years
Contractual Obligations:					
Principal on convertible subordinated debt	$170.3	$ —	$ —	$170.3	$ —
Interest on convertible subordinated debt	42.1	9.4	18.7	14.0	—
Non-cancelable operating lease obligations	77.7	14.6	20.0	16.3	26.8
Total contractual obligations	$290.1	$ 24.0	$38.7	$200.6	$ 26.8

We have purchase commitments of $12.5 million at September 30, 2002, the timing of which is dependent upon provision by the vendor of products and services. Additionally, we have committed to purchase equity in certain companies when certain events occur. The total amount committed to purchase equity at September 30, 2002 was $5.0 million. These commitments are considered contingent commitments as future events must occur to cause the commitments to be enforceable.

In October 2002, we announced that our board of directors authorized the expenditure of up to $30 million to repurchase shares of our common stock in open market and privately negotiated transactions. Through November 4, 2002, we had repurchased, and retired, 495,000 shares for an aggregate purchase price of $2.3 million.

In November 2002, we announced a plan to reduce expenses in 2003, primarily in research and development, through a combination of spending reductions, workforce reductions and office consolidations. The expense reduction plan will result in a workforce reduction of approximately 37% of our approximately 700 person workforce and a consolidation of our Palo Alto, California office and research facilities.

We expect to use net cash in 2002 as we invest in our therapeutic discovery and development programs and intellectual property portfolio; continue to seek access to technologies through investments, research and development alliances, license agreements and/or acquisitions (including the acquisition of Maxia Pharmaceuticals, Inc., which is expected to close in either the fourth quarter of 2002 or the first quarter of 2003); make strategic investments; and continue to make improvements in existing and potential new facilities.

We believe that our existing resources will be adequate to satisfy our capital needs for at least the next twelve months. Our cash requirements depend on numerous factors, including our ability to attract and retain collaborators for our databases and other products and services; expenditures in connection with alliances, license agreements and acquisitions of and investments in complementary technologies and businesses; expenditures in connection with our expansion of therapeutic discovery and development programs; competing technological and market developments; the cost of filing, prosecuting, defending and

enforcing patent claims and other intellectual property rights; capital expenditures required to expand our facilities, including facilities for our expanding therapeutic discovery and development programs; and costs associated with the integration of new operations assumed through mergers and acquisitions. Changes in our research and development plans or other changes affecting our operating expenses may result in changes in the timing and amount of expenditures of our capital resources.

FACTORS THAT MAY AFFECT RESULTS

RISKS RELATING TO OUR FINANCIAL RESULTS

We have had only limited periods of profitability, we expect to incur losses in the future and we may not return to profitability.

We had net losses from inception in 1991 through 1996 and in 1999 through the nine months ended September 30, 2002. Because of those losses, we had an accumulated deficit of $337.5 million as of September 30, 2002. We intend to continue to spend significant amounts on new product and technology development, including the expansion of our internal research and development efforts for therapeutic discovery and development, the determination of the sequence of genes and the filing of patent applications regarding those gene sequences, the determination of gene functions, and the expansion of our research and development alliances. As a result, we expect to incur losses in 2002. We expect to report net losses in future periods as well.

We expect that any profits from our information products will be more than offset by expenditures for our therapeutic discovery and development efforts. We anticipate that these efforts will increase as we focus on the studies that are required before we can sell, or license to a third party, a drug product. The development of therapeutic products will require significant expenses for research, development, testing and regulatory approvals. Unless we generate significant revenues to pay these costs, we will not return to profitability. We cannot be certain whether or when we will again become profitable because of the significant uncertainties relating to our ability to generate commercially successful drug products that will generate significant revenues.

Our operating results are difficult to predict, which may cause our stock price to decline and result in losses to investors.

Our operating results are difficult to predict and may fluctuate significantly from period to period, which may cause our stock price to decline and result in losses to investors. Some of the factors that could cause our operating results to fluctuate include:

- changes in the demand for our products;
- the timing of intellectual property licenses that we may grant;
- the introduction of competitive databases or services, including databases of publicly available, or public domain, genetic information;
- the nature, pricing and timing of products and services provided to our collaborators;
- our ability to compete effectively in our therapeutic discovery and development efforts against competitors that have greater financial or other resources or drug candidates that are in further stages of development;
- acquisition, licensing and other costs related to the expansion of our operations, including operating losses of acquired businesses;
- losses and expenses related to our investments;
- our ability to attract and retain key personnel;
- regulatory developments or changes in public perceptions relating to the use of genetic information and the diagnosis and treatment of disease based on genetic information;
- regulatory actions and changes related to the development of drugs;
- changes in intellectual property laws that affect our rights in genetic information that we license;
- payments of milestones, license fees or research payments under the terms of our external alliances and collaborations and our ability to monitor and enforce such payments; and
- expenses related to, and the results of, litigation and other proceedings relating to intellectual property rights, including the lawsuits filed by Invitrogen and counterclaims filed by us.

We anticipate significant fixed expenses, due in part to our expansion of our therapeutic discovery and development programs, and our continuing investment in product development and extensive support for our database collaborators. We may be unable to adjust our expenditures if revenues in a particular period fail to meet our expectations, which would harm our operating results for that period. Forecasting operating and integration expenses for acquired businesses may be particularly difficult, especially where the acquired business focuses on technologies that do not have an established market. We believe that period-to-period comparisons of our financial results will not necessarily be meaningful. You should not rely on these comparisons as an indication of our future performance. If our operating results in any future period fall below the expectations of securities analysts and investors, our stock price will likely fall, possibly by a significant amount. In addition, if market or other economic conditions impact the stock market generally, or impact other companies in our industry, our stock price may also decline, possibly significantly.

If our strategic investments incur losses or charges, our earnings may decline or our losses may increase.

We make strategic investments in entities that complement our business. These investments may:

- often be made in securities lacking a public trading market or subject to trading restrictions, either of which increases our risk and reduces the liquidity of our investment;
- require us to record losses and expenses related to our ownership interest;
- require us to record charges related to the impairment in the value of the securities underlying our investment;
- require us to record acquisition-related charges, such as in-process research and development;
- require us to record charges related to post-acquisition impairment in the value of the acquired assets, such as goodwill or intangibles; and
- require us to invest greater amounts than anticipated or to devote substantial management time to the management of research and development or other relationships.

The market values of many of these investments can fluctuate significantly. We evaluate our long-term equity investments for impairment of their values on a quarterly basis. The volatility of the equity markets and the uncertainty of the biotechnology industry may result in fluctuations in the value of our investments in public companies. The value of our investments in private companies can also fluctuate significantly. Current market conditions may cause us to write-down the value of our private company investments. Many private companies are encountering difficulties in raising capital in the current market, and even if they are successful, subsequent rounds of financing are often at lower valuations than previous rounds. Impairment could result in future charges to our earnings. These losses and expenses may exceed the amounts that we anticipated.

Our debt investments are impacted by the financial viability of the underlying companies.

We have a diversified portfolio of investments. Our fixed rate debt investments comply with our policy of investing in only investment-grade debt instruments. The ability for the debt to be repaid upon maturity or to have a viable resale market is dependent, in part, on the financial success of the underlying company. Should the underlying company suffer significant financial difficulty, the debt instrument could either be downgraded or, in the worst case, our investment could be worthless. This would result in our losing the cash value of the investment and incurring a charge to our statement of operations.

Because our sales cycle is lengthy, we may spend a lot of time and money trying to obtain new or renewed subscriptions to our products but may be unsuccessful, which could hurt our profitability.

Our ability to obtain new customers for information products to enter into license agreements for our intellectual property or to obtain renewals or additions to existing database product subscriptions depends upon prospective subscribers' perceptions that our products and services can help accelerate their drug discovery efforts. Our database and licensing sales cycle is typically lengthy because we need to educate our potential subscribers and sell the benefits of our products to a variety of constituencies within potential subscriber companies. In addition, each agreement involves the negotiation of unique terms, and we may expend substantial funds and management effort with no assurance that a new, renewed or expanded agreement will result. These expenditures, without increased revenues, will negatively impact our profitability. Consolidations of pharmaceutical companies involved in drug discovery and development as well as expenditure reductions have affected the timing, progress and relative success of our sales efforts. We expect that any future consolidations will have similar effects. In addition, current or prospective subscribers may perceive us to be in competition with them given our internal therapeutic discovery and development efforts, which may adversely impact new sales or renewals.

We have a large amount of debt and our debt service obligations may prevent us from taking actions that we would otherwise consider to be in our best interests.

As of September 30, 2002, we had:

- total consolidated debt of $172.1 million,
- stockholders' equity of $370.5 million, and
- A deficiency of earnings available to cover fixed charges of $68.5 million for the nine months ended September 30, 2002.

A variety of uncertainties and contingencies will affect our future performance, many of which are beyond our control. We may not generate sufficient cash flow in the future to enable us to meet our anticipated fixed charges, including our debt service requirements with respect to our convertible subordinated notes due 2007 that we sold in February 2000. At September 30, 2002, $170.3 million of those notes were outstanding. The following table shows, as of September 30, 2002, the aggregate amount of our interest payments due in each of the next five calendar years listed:

Year	Aggregate Interest
2002	$9,550,750
2003	9,366,500
2004	9,366,500
2005	9,366,500
2006	9,366,500

Our substantial leverage could have significant negative consequences for our future operations, including:

- increasing our vulnerability to general adverse economic and industry conditions;
- limiting our ability to obtain additional financing;
- requiring the dedication of a substantial portion of our expected cash flow to service our indebtedness, thereby reducing the amount of our expected cash flow available for other purposes, including working capital and capital expenditures;
- limiting our flexibility in planning for, or reacting to, changes in our business and the industry in which we compete; or
- placing us at a possible competitive disadvantage compared to less leveraged competitors and competitors that have better access to capital resources.

The capital markets may not permit us to raise additional capital at the time that we require it.

We believe that we have sufficient capital to satisfy our capital needs for at least the next twelve months. However, our future funding requirements will depend on many factors and we anticipate that, at some future point, we will need to raise additional capital to fund our business plan and research and development efforts on a going-forward basis. If we require additional capital at a time when investment in biotechnology companies such as ours, or in the marketplace generally, is limited due to the then prevailing market or other conditions, we may not be able to raise such funds at the time that we desire or any time thereafter.

Additional factors which may affect our future funding requirements include:

- any changes in the breadth of our research and development programs;
- the results of research and development, preclinical studies and clinical trials conducted by us or our future collaborative partners or licensees, if any;
- the acquisition or licensing of businesses, technologies or compounds, if any;
- our ability to maintain and establish new corporate relationships and research collaborations;
- competing technological and market developments;
- the amount of revenues generated from our business activities;

- the time and costs involved in filing, prosecuting, defending and enforcing patent and intellectual property claims;
- the receipt of contingent licensing or milestone fees from our current or future collaborative and license arrangements, if established; and
- the timing of regulatory approvals.

RISKS RELATING TO OUR BUSINESS AND INDUSTRY

Our workforce reduction announced in November 2002 may have an adverse impact on our ability to deliver our information products on time, and we may fail to meet the expectations of our customers, which could in turn negatively impact our operating results.

In November 2002, we announced a reduction of approximately 37% of our workforce, including significant personnel reductions in our information product operations, in order to reduce expenses. Many factors, such as the reallocation of responsibilities among remaining personnel, the planned consolidation of our facilities and employee morale issues, may adversely impact our ability to deliver our products in accordance with our current plans or customer expectations, cause delays in the delivery of our products, or lead us to change our information product plans, which in turn may have a negative impact on our revenues and customer relationships. In addition, the implementation of the expense reduction program may itself result in customer concerns regarding our future performance and our ability to meet their expectations for our products, the diversion of efforts of our executive management team and other key employees, and higher than anticipated costs, any of which may negatively impact our operating results.

Difficulties we may encounter managing the growth of our therapeutic discovery and development efforts may divert resources and limit our ability to successfully expand our business.

Our anticipated growth in the future of our therapeutic discovery and development programs, and our establishment of those operations places a strain on our infrastructure. As those operations expand, we expect that we will need to manage multiple locations and additional relationships with various collaborative partners, suppliers and other third parties. The growth of those operations requires us to continue to improve our operational, financial and management controls, reporting systems and procedures. We may not be able to successfully implement improvements to our management information and control systems in an efficient or timely manner and may discover deficiencies in existing systems and controls. In addition, we are currently exploring permanent locations on the East Coast of the United States for our therapeutic discovery and development operations. If we are unable to locate facilities on a timely basis, if at all, the growth of our therapeutic discovery and development operations may be adversely impacted.

Our industry is intensely competitive, and if we do not compete effectively, our revenues may decline and our losses may increase.

We compete in markets that are new, intensely competitive, rapidly changing, and fragmented. Many of our current and potential competitors have greater financial, human and other resources than we do. If we cannot respond quickly to changing customer requirements, secure intellectual property positions, or adapt quickly and obtain access to new and emerging technologies, our revenues may decline and commercial opportunities for any of our drug products may be reduced or eliminated. Our competitors include:

- Applera Corporation,
- CuraGen Corporation,
- Gene Logic Inc.,
- Human Genome Sciences, Inc.,
- pharmaceutical and biotechnology companies, and
- universities and other research institutions.

The human genome contains a finite number of genes. Our competitors may seek to identify, sequence and determine the biological function of numerous genes in order to obtain a proprietary position with respect to new genes.

In addition, we face competition from companies who are developing and may seek to develop new technologies for discovering the functions of genes, gene expression information, including microarray technologies, discovery of variations among genes and related technologies. Also, if we are unable to obtain the technology we currently use or new advanced technology on acceptable terms, but other companies are, we will be unable to compete.

We also face competition from providers of software. A number of companies have announced their intent to develop and market software to assist pharmaceutical companies and academic researchers in managing and analyzing their own genomic data and publicly available data. If pharmaceutical companies and researchers are able to manage their own genomic data, or find software solutions for managing genomic data that they find preferable to those provided by us and our collaborators, they may not subscribe to our databases.

Extensive research efforts resulting in rapid technological progress characterize the genomics industry. To remain competitive, we must continue to expand our databases, improve our software, and invest in new technologies. New developments will probably continue, and discoveries by others may render our services and potential products noncompetitive.

We face significant competition for our therapeutic discovery and development efforts, and if we do not compete effectively, our commercial opportunity will be reduced or eliminated.

The biotechnology and pharmaceutical industries are intensely competitive and subject to rapid and significant technological change. Our therapeutic discovery and development efforts may target diseases and conditions that are already subject to existing therapies or that are subject to the drug discovery efforts of other entities. These competitors may develop products more rapidly or successfully than we or our collaborators are able to do. Our competitors might develop drugs that are more effective or less costly than any that are being developed by us or that would render our products obsolete and noncompetitive. In addition, our competitors may succeed in obtaining regulatory approvals for drug candidates more rapidly. Also, our competitors may obtain patent protection or other intellectual property rights that would limit our rights. Any drugs resulting from our research and development efforts, or from our joint efforts with any future collaborators, might not be able to compete successfully with competitors' existing and future products or obtain regulatory approval in the United States or elsewhere.

We depend on key employees in a competitive market for skilled personnel, and the loss of the services of any of our key employees would affect our ability to achieve our objectives.

We are highly dependent on the principal members of our management, operations and scientific staff. Our product development, operations and marketing efforts could be delayed or curtailed if we lose the services of any of these people.

Our future success also will depend in part on the continued service of our executive management team, key scientific, bioinformatics and management personnel and our ability to identify, hire, train and retain additional personnel for our therapeutic drug discovery and development programs. We experience intense competition for qualified personnel. If we are unable to continue to attract, train and retain these personnel, we may be unable to expand our business.

We rely on a small number of suppliers of certain products we need for our business and strategic collaborations with software providers for our information products, and if we are unable to obtain sufficient supplies, or maintain such strategic relationships, we will be unable to compete effectively.

Currently, we use gene sequencing machines supplied by Molecular Dynamics, a subsidiary of Amersham Pharmacia Biotech, Ltd., and chemicals used in the sequencing process, called reagents, supplied by Roche Bioscience and Amersham Pharmacia Biotech, Ltd. in our gene sequencing operations. If we are not able to obtain an adequate supply of reagents or other materials at commercially reasonable rates, our ability to identify genes or genetic variations would be slower and more expensive.

In addition, we rely on strategic collaborations with a limited number of software providers to provide important functionality for our products. If any, or all, of these collaborators suffer business difficulties, we may spend time and money to replace the functionality, we may not be able to deliver on customer commitments, and we may be otherwise adversely affected or our customer relationships and revenues may suffer.

If the information we obtain from third-party data sources is corrupt or violates the law, our revenues and operating results could decline.

We rely on and include in our databases scientific and other data supplied by others, including publicly available information from sources such as the Human Genome Project. This data could contain errors or other defects, which could corrupt our databases. In addition, we cannot guarantee that our data sources acquired this information in compliance with legal requirements. If this data caused database corruption or violated legal requirements, we would be unable to sell subscriptions to our databases. These lost sales would harm our revenue and operating results.

Security risks in electronic commerce, unfavorable internet regulations, or business difficulties suffered by our collaborators may deter future use of our products, which could result in a loss of revenues.

We offer several products through our website on the Internet and may offer additional products in the future. Our ability to provide secure transmissions of confidential information over the Internet may limit online use of our products and services by our database collaborators as we may be limited by our inability to provide secure transmissions of confidential information over the Internet. Advances in computer capabilities and new discoveries in the field of cryptography may compromise the security measures we use to protect our website, access to our databases, and transmissions to and from our website. If our security measures are breached, our proprietary information or confidential information about our collaborators could be misappropriated. Also, a security breach could result in interruptions in our operations. The security measures we adopt may not be sufficient to prevent breaches, and we may be required to incur significant costs to protect against security breaches or to alleviate problems caused by breaches. Further, if the security of our website, or the website of another company, is breached, our collaborators may no longer use the Internet when the transmission of confidential information is involved. For example, recent attacks by computer hackers on major e-commerce websites and other Internet service providers have heightened concerns regarding the security and reliability of the Internet.

Because of the growth in electronic commerce, the United States Congress has held hearings on whether to further regulate providers of services and transactions in the electronic commerce market. The federal government could enact laws, rules and regulations that would affect our business and operations. Individual states could also enact laws regulating the use of the Internet. If enacted, these federal and state laws, rules and regulations could require us to change our online business and operations, which could limit our growth and our development of our online products.

Because our revenues are derived primarily from the pharmaceutical and biotechnology industries, our revenues may fluctuate substantially due to reductions and delays in research and development expenditures.

We expect that our revenues in the foreseeable future will be derived primarily from products and services provided to the pharmaceutical and biotechnology industries as well as to the academic community. Accordingly, our success will depend in large part upon the success of the companies within these industries and their demand for our products and services. Our operating results may fluctuate substantially due to reductions and delays in research and development expenditures by companies in these industries or by the academic community. These reductions and delays may result from factors such as:

- changes in economic conditions;
- consolidation in the pharmaceutical and biotechnology industries;
- changes in the regulatory environment, including governmental pricing controls, affecting health care and health care providers;
- pricing constraints;
- market-driven pressures on companies to consolidate and reduce costs; and
- other factors affecting research and development spending.

These factors are not within our control.

We are at the early stage of our therapeutic discovery and development efforts and we may be unsuccessful in our efforts.

We are in the early stage of building our therapeutic discovery and development operations. Our ability to develop and commercialize pharmaceutical products based on proteins, antibodies and other compounds will depend on our ability to:

- hire and retain key scientific employees;
- identify high quality therapeutic targets;
- identify potential therapeutic candidates;
- develop products internally;
- complete laboratory testing and human studies;
- obtain and maintain necessary intellectual property rights to our products;
- obtain and maintain necessary regulatory approvals related to the efficiency and safety of our products;
- enter into arrangements with third parties to provide services or manufacture our products on our behalf or develop efficient production facilities meeting all regulatory requirements;
- deploy sales and marketing resources effectively or enter into arrangements with third parties to provide these functions;
- lease facilities at reasonable rates to support our growth; and
- enter into arrangements with third parties to license and commercialize our products.

We have limited corporate experience with these activities and may not be successful in developing or commercializing drug products. If we choose to outsource some of these activities, we may be unable to enter into outsourcing or licensing agreements on commercially reasonable terms, or at all. In addition, if we, in the future, elect to manufacture our products in our own manufacturing facilities, those facilities will require substantial additional capital resources, and we will need to attract and retain qualified personnel to build or lease or operate any such facilities.

The success of our therapeutic discovery and development efforts may depend on our ability to find collaborators or other service providers to leverage our capabilities, and if we are unable to establish future collaborations or if these future collaborations are unsuccessful, our research and development efforts could be delayed.

Our strategy may depend in part upon the formation and sustainability of multiple collaborative arrangements and license agreements with third parties in the future. We may rely on these arrangements for not only financial resources, but also for expertise that we expect to need in the future relating to clinical trials, manufacturing, sales and marketing, and for licenses to technology rights. In order for any future collaboration efforts to be successful, we must first identify potential collaborators whose capabilities complement and integrate well with ours. Our collaborators may prove difficult to work with or less skilled than we originally expected.

It is likely that we will not be able to control the amount and timing of resources that our future corporate collaborators devote to our programs or potential products. We do not know whether our future collaborators, if any, might pursue alternative technologies or develop alternative products either on their own or in collaboration with others, including our competitors, as a means for developing treatments for the diseases targeted by collaborative arrangements with us. Conflicts also might arise with future collaborative partners concerning proprietary rights to particular compounds.

We might not be able to commercialize our therapeutic product candidates successfully, and we may spend significant time and money attempting to do so.

At the present time, we are in the early stages of organizing our therapeutic discovery and development operations. We have yet to identify potential therapeutic compounds and then put them into clinical testing. Of the compounds we identify as potential therapeutic candidates, at most, only a few are statistically likely to lead to successful therapeutic development efforts. We expect drugs that result from our research will not be commercially available for a number of years, if at all. Commercialization of any product candidates that we identify and develop depends on successful completion of preclinical studies and clinical trials. Preclinical testing and clinical development are long, expensive and uncertain processes, and we do not know whether we, or any of our future collaborators, will be permitted to undertake clinical trials of any potential products. It may take us or any of our future collaborators several years to complete any such testing, and failure can occur at any stage of testing. Interim results of trial do not necessarily predict final results, and acceptable results in early trials may not be repeated in later trials. Data obtained from tests are susceptible to varying interpretation, which may delay, limit or prevent regulatory approval. Regulatory authorities may refuse or delay approval as a result of many other factors, including changes in regulatory policy during the period of product development. A number of companies in the pharmaceutical industry, including biotechnology companies, have suffered significant setbacks in advanced clinical trials, even after achieving promising results in earlier trials. Moreover, if and when our products reach clinical trials, we, or our future collaborators, may decide to discontinue development of any or all of these products at any time for commercial, scientific or other reasons. There is also a risk that competitors and third parties may develop similar or superior products or have proprietary rights that preclude us from ultimately marketing our products, as well as the potential risk that our products may not be accepted by the marketplace.

Completion of clinical trials may take many years. The length of time required varies substantially according to the type, complexity, novelty and intended use of the product candidate. Our rate of commencement and completion of clinical trials may be delayed by many factors, including:

- our inability to manufacture sufficient quantities of materials for use in clinical trials;
- variability in the number and types of patients available for each study;
- difficulty in maintaining contact with patients after treatment, resulting in incomplete data;
- unforeseen safety issues or side effects;
- poor or unanticipated effectiveness of products during the clinical trials; or
- government or regulatory delays.

An important element of our business strategy is entering into collaborative arrangements with third parties under which we license our therapeutic product candidates to those third parties for development and commercialization. We face significant competition in seeking appropriate collaborators. Also, these arrangements are complex to negotiate and time-consuming to document. We may not be successful in our attempts to establish these arrangements. The terms of any such arrangements that we establish may not be favorable to us. Further, any such arrangements may be unsuccessful.

We may encounter difficulties in integrating companies we acquire, and our operations and financial results could be harmed.

As part of our business strategy, we acquire assets, technologies, compounds and businesses. Our past acquisitions have involved and our future acquisitions, including our pending acquisition of Maxia Pharmaceuticals, Inc., may involve risks such as the following:

- we may be exposed to unknown liabilities of acquired companies;
- our acquisition and integration costs may be higher than we anticipated and may cause our quarterly and annual operating results to fluctuate;
- we may experience difficulty and expense in assimilating the operations and personnel of the acquired businesses, disrupting our business and diverting management’s time and attention;
- we may be unable to integrate or complete the development and application of acquired technology, or compounds;
- we may experience difficulties in establishing and maintaining uniform standards, controls, procedures and policies;

- our relationships with key customers of acquired businesses may be impaired, due to changes in management and ownership of the acquired businesses;
- we may be unable to retain key employees of the acquired businesses;
- we may incur amortization or impairment expenses if an acquisition results in significant goodwill or other intangible assets; and
- our stockholders may be diluted if we pay for the acquisition with equity securities.

In addition, if we acquire additional businesses that are not located near existing sites, we may experience more difficulty integrating and managing the acquired businesses' operations.

If product liability lawsuits are successfully brought against us, we could face substantial liabilities and may be required to limit commercialization of our products.

The testing and marketing of medical products entails an inherent risk of product liability. If we cannot successfully defend ourselves against product liability claims, we may incur substantial liabilities or be required to limit commercialization of our products. Although we intend to obtain product liability insurance, this insurance may be prohibitively expensive, or may not fully cover our potential liabilities. Our inability to obtain sufficient product liability insurance at an acceptable cost to protect against potential product liability claims could prevent or inhibit the commercialization of pharmaceutical products we develop, alone or with our future collaborators. We, or our future collaborators, might not be able to obtain insurance at a reasonable cost, if at all.

If a natural disaster occurs, we may have to cease or limit our business operations.

We conduct our database and a significant portion of our other activities at our facilities in Palo Alto, California, which is in a seismically active area. Although we maintain business interruption insurance, we do not have or plan to obtain earthquake insurance. A major catastrophe, such as an earthquake or other natural disaster, could result in a prolonged interruption of our business.

RISKS RELATING TO CUSTOMERS AND COLLABORATORS

To generate significant revenues, we must obtain additional database customers and retain existing customers.

If we are unable to enter into additional agreements, or if our current database customers choose not to renew their agreements upon expiration or choose to renew their agreements at lower prices or for shorter durations, we may not generate additional revenues or maintain our current revenues. Our database revenues are also affected by the extent to which existing customers expand their agreements with us to include our new database products and the extent to which existing customers reduce the number of products for which they subscribe, the impact of which will vary based upon our pricing of those products. Some of our database agreements require us to meet performance obligations, some or all of which we may not be successful in attaining. A database customer can terminate its agreement before the end of its scheduled term if we breach the agreement and fail to cure the breach within a specified period. In addition, it is likely that database revenues will decrease if we are successful in entering into co-development arrangements with some of our current database subscribers to develop new therapeutic products.

Licensing our gene-related intellectual property may not contribute to revenues for several years, and may never result in revenues.

Part of our strategy is to license to database customers and to some of our other customers our know-how and patent rights associated with the genetic information in our proprietary databases, for use in the discovery and development of potential pharmaceutical, diagnostic or other products. Any potential product that is the subject of such a license will require several years of further development, clinical testing and regulatory approval before commercialization. Therefore, milestone or royalty payments from these collaborations may not contribute to revenues for several years, if at all.

If conflicts arise between our future collaborators or advisors and us, they may act in their self-interest, which may be adverse to our interests or to the interests of our stockholders.

If conflicts arise between us and our future corporate collaborators or future scientific advisors, if any, the other party may act in its self-interest and not in the interest of our stockholders. It is likely that many of our future collaborators will be conducting multiple product development efforts within each disease area that is the subject of the collaboration with us. Our future corporate collaborators may develop, either alone or with others, products in related fields that are competitive with the products or potential products that are the subject of these collaborations. Competing products, either developed by our future collaborators or to which our future collaborators have rights, may result in their withdrawal of support for our product candidates.

If we fail to enter into future collaborative arrangements or if these arrangements are unsuccessful, our business and operations would be negatively impacted.

We do not know if we will be able to establish collaborative arrangements, or whether any such future collaborative arrangements will ultimately be successful. For example, there have been, and may continue to be, a significant number of recent business combinations among large pharmaceutical companies that have resulted, and may continue to result, in a reduced number of potential future corporate collaborators. This consolidation may limit our ability to find partners who will work with us in developing and commercializing drugs. If business combinations involving our existing corporate collaborators were to occur, the effect could be to diminish, terminate or cause delays in one or more of our corporate collaborations or agreements. If we are unable to enter into collaborative arrangements or if those arrangements are unsuccessful, our research and development efforts could be negatively impacted and we may need to seek additional capital resources during times when those resources may not be available or are available on less favorable terms.

RISKS RELATING TO INTELLECTUAL PROPERTY

Our database revenues could decline due to sequences becoming publicly available.

Our competitors may discover and establish patent positions with respect to the genes in our databases. Our competitors and other entities who engage in gene discovery may make the results of their sequencing efforts publicly available. Currently, academic institutions and other laboratories participating in the Human Genome Project make their gene sequence information available through a number of publicly available databases, including the GenBank database. The public availability of these discoveries or resulting patent positions covering substantial portions of the human genome could reduce the potential value of our databases to our collaborators. Public availability of sequences could also impair our ability to realize royalties or other revenue from any commercialized products based on genetic information made public prior to our patent filings.

We are involved in patent litigation, which if not resolved favorably, could require us to pay damages

We are currently involved in patent litigation.

In October 2001, Invitrogen Corporation filed an action against us in federal court, alleging infringement of three patents that relate to the use of reverse transcriptase with no RNase H activity in preparing complimentary DNA from RNA. The complaint seeks unspecified money damages and injunctive relief. In November 2001, we filed our answers to Invitrogen's patent infringement claims, and asserted seven counterclaims against Invitrogen seeking declaratory relief with respect to the patents at issue, implied license, estoppel, laches, and patent misuse. We are also seeking our fees, costs and expenses.

In November 2001, we filed a complaint against Invitrogen in federal court alleging infringement of 13 of our patents relating to genes, RNA amplification and gene expression, and methods of fabricating microarrays of biological samples. The complaint seeks a permanent injunction enjoining Invitrogen from further infringement of the patents at issue, damages for Invitrogen's conduct, as well as our fees, costs, and interest. We are further seeking triple damages from the infringement claim based on Invitrogen's willful infringement of our patents. In April 2002, Invitrogen filed answers to our patent infringement claims.

We believe we have meritorious defenses and intend to defend the suit brought by Invitrogen vigorously. However, our defenses may be unsuccessful. At this time, we cannot reasonably estimate the possible range of any loss or damages resulting from these suits and counterclaims due to uncertainty regarding the ultimate outcome. In addition, regardless of the outcome, we expect that the Invitrogen litigation will result in substantial costs to us. Further, there can be no assurance that any license that may be required as a result of this litigation will be available on commercially acceptable terms, if at all.

If we are subject to additional litigation and infringement claims, they could be costly and disrupt our business

The technology that we use to develop our products, and the technology that we incorporate in our products, may be subject to claims that they infringe the patents or proprietary rights of others. The risk of this occurring will tend to increase as the genomics, biotechnology and software industries expand, more patents are issued and other companies attempt to discover genes and SNPs and engage in other genomic-related businesses. The success of our therapeutic discovery and development efforts will also depend, in part, on our ability to operate without infringing or misappropriating the proprietary rights of others.

As is typical in the genomics, biotechnology and software industries, we have received, and we will probably receive in the future, notices from third parties alleging patent infringement. Except for Invitrogen, no third party has a current filed patent lawsuit against us.

We may, however, be involved in future lawsuits alleging patent infringement or other intellectual property rights violations. In addition, litigation may be necessary to:

- assert claims of infringement;
- enforce our patents;
- protect our trade secrets or know-how; or
- determine the enforceability, scope and validity of the proprietary rights of others.

We may be unsuccessful in defending or pursuing these lawsuits. Regardless of the outcome, litigation can be very costly and can divert management's efforts. An adverse determination may subject us to significant liabilities or require us or our future collaborators to seek licenses to other parties' patents or proprietary rights. We or our future collaborators may also be restricted or prevented from manufacturing or selling our products and services. Further, we, or our future collaborators may not be able to obtain any necessary licenses on acceptable terms, if at all.

We may be unable to protect our proprietary information, which may result in its unauthorized use and a loss of revenue.

Our business and competitive position depend upon our ability to protect our proprietary database information and software technology. Despite our efforts to protect this information and technology, unauthorized parties may attempt to obtain and use information that we regard as proprietary. Although our database subscription agreements require our subscribers to control access to our databases, policing unauthorized use of our databases and software may be difficult, both domestically and internationally.

We pursue a policy of having our employees, consultants and advisors execute proprietary information and invention agreements when they begin working for us. However, these agreements may not provide meaningful protection for our trade secrets or other proprietary information in the event of unauthorized use or disclosure.

Our means of protecting our proprietary rights may not be adequate, and our competitors may:

- independently develop substantially equivalent proprietary information and techniques;
- otherwise gain access to our proprietary information; or
- design around patents issued to us or our other intellectual property.

If the inventions described in our patent applications on full-length or partial genes, proteins and antibodies are found to be unpatentable, our issued patents are not enforced or our patent applications conflict with patent applications filed by others, our revenues may decline.

One of our strategies is to file patent applications on what we believe to be novel full-length and partial genes, proteins, antibodies and SNPs obtained through our efforts to discover the order, or sequence, of the molecules, or bases, of genes. We have filed U.S. patent applications in which we claimed partial sequences of some genes. We have also applied for patents in the U.S. and other countries claiming full-length gene sequences associated with cells and tissues involved in our gene sequencing program. We hold a number of issued U.S. patents on full-length genes, the proteins they encode and antibodies directed against them and one issued U.S. patent claiming multiple partial gene sequences. While the United States Patent and Trademark Office has issued patents covering full-length genes, partial gene sequences and SNPs, the Patent and Trademark Office may choose to interpret new guidelines for the issuance of patents in a more restrictive manner in the future, which could affect the issuance of our pending patent applications. We also do not know whether or how courts may enforce our issued patents, if that becomes necessary. If a court finds these types of inventions to be unpatentable, or interprets them narrowly, the value of our patent portfolio and possibly our revenues could be diminished.

We believe that some of our patent applications claim genes and partial sequences of genes that may also be claimed in patent applications filed by others. In some or all of these applications, a determination of priority of inventorship may need to be decided in an interference before the United States Patent and Trademark Office, before a patent is issued. If a full-length or partial length sequence for which we seek a patent is issued to one of our competitors, we may be unable to include that full-length or partial length sequence in a library of bioreagents. This could result in a loss of revenues.

If the effective term of our patents is decreased due to changes in the U.S. patent laws or if we need to refile some of our patent applications, the value of our patent portfolio and the revenues we derive from it may be decreased.

The value of our patents depends in part on their duration. A shorter period of patent protection could lessen the value of our rights under any patents that we obtain and may decrease the revenues we derive from our patents. The U.S. patent laws were amended in 1995 to change the term of patent protection from 17 years from patent issuance to 20 years from the earliest effective filing date of the application. Because the average time from filing to issuance of biotechnology applications is at least one year and may be more than three years depending on the subject matter, a 20-year patent term from the filing date may result in substantially shorter patent protection. Also, we may need to refile some of our applications claiming large numbers of gene sequences and, in these situations, the patent term will be measured from the date of the earliest priority application. This would shorten our period of patent exclusivity and may decrease the revenues that we might obtain from the patents.

If patent application filing fees are significantly increased, our expenses related to intellectual property or our intellectual property strategy may be adversely affected.

Our ability to license proprietary genes may be dependent on our ability to obtain patents. We believe we have the largest commercial portfolio of issued United States patents covering human full-length genes, the proteins they encode and the antibodies directed against them. If legislation currently proposed by the United States Patent and Trademark Office is adopted, fees associated with filing and prosecuting patent applications would increase significantly. If such fees are significantly increased, we would incur higher expenses and our intellectual property strategy could be adversely affected.

International patent protection is particularly uncertain, and if we are involved in opposition proceedings in foreign countries, we may have to expend substantial sums and management resources.

Biotechnology patent law outside the United States is even more uncertain than in the United States and is currently undergoing review and revision in many countries. Further, the laws of some foreign countries may not protect our intellectual property rights to the same extent as U.S. laws. We may participate in opposition proceedings to determine the validity of our foreign patents or our competitors' foreign patents, which could result in substantial costs and diversion of our efforts.

REGULATORY RISKS

If we are unable to obtain regulatory approval to develop and market products in the United States and foreign jurisdictions, we or our future collaborators might not be permitted to commercialize products from our research.

Before commencing clinical trials in humans, we, or our future collaborators, will need to submit and receive approval from the FDA of an Investigational New Drug application, or IND. The regulatory process also requires preclinical testing. Data obtained from preclinical and clinical activities are susceptible to varying interpretations, which could delay, limit or prevent regulatory approval. In addition, delays or rejections may be encountered based upon changes in regulatory policy for product

approval during the period of product development and regulatory agency review. Any failure to obtain regulatory approval could delay or prevent us from commercializing products.

Due, in part, to the early stage of our drug candidate research and development process, we cannot predict whether regulatory approval will be obtained for any product we, or our future collaborators, hope to develop. Significant research and development efforts will be necessary before any products can be commercialized. Satisfaction of regulatory requirements typically takes many years, is dependent upon the type, complexity and novelty of the product and requires the expenditure of substantial resources.

If regulatory approval of a product is granted, this approval will be limited to those disease states and conditions for which the product is demonstrated through clinical trials to be safe and efficacious. We cannot ensure that any compound developed by us, alone or with others, will prove to be safe and efficacious in clinical trials and will meet all of the applicable regulatory requirements needed to receive marketing approval.

Outside the United States, our ability, or that of our future collaborative partners, to market a product is contingent upon receiving a marketing authorization from the appropriate regulatory authorities. This foreign regulatory approval process typically includes all of the risks associated with FDA approval described above and may also include additional risks.

Because our activities involve the use of hazardous materials, we may be subject to claims relating to improper handling, storage or disposal of these materials that could be time consuming and costly.

Our research and development processes involve the controlled use of hazardous and radioactive materials and biological waste. Our operations produce hazardous waste products. We cannot eliminate the risk of accidental contamination or discharge and any resultant injury from these materials. We are subject to federal, state and local laws and regulations governing the use, manufacture, storage, handling and disposal of these materials and waste products. We may be sued for any injury or contamination that results from our use or the use by third parties of these materials, and our liability may exceed our insurance coverage and our total assets. Compliance with environmental laws and regulations may be expensive, and current or future environmental regulations may impair our research, development and production efforts.

Future changes to environmental, health and safety laws could cause us to incur additional expense or restrict our operations. In addition, our future collaborators may use hazardous materials in connection with our collaborative efforts. To our knowledge, their work is performed in accordance with applicable biosafety regulations. In the event of a lawsuit or investigation, however, we could be held responsible for any injury caused to persons or property by exposure to, or release of, these hazardous materials used by these parties. Further, we may be required to indemnify our collaborators against all damages and other liabilities arising out of our development activities or products produced in connection with these collaborations.

Item 3: Quantitative and Qualitative Disclosures About Market Risk

We are exposed to interest rate risk primarily through our investments in short-term marketable securities. Our investment policy calls for investment in short term, low risk instruments. As of September 30, 2002, investments in marketable securities were $437.1 million. Due to the nature of these investments, if market interest rates were to increase immediately and uniformly by 10% from levels as of September 30, 2002, the decline in the fair value of the portfolio would not be material.

We are exposed to equity price risks on the marketable portion of equity securities included in our portfolio of investments and long-term investments, entered into to further our business and strategic objectives. These investments are in small capitalization stocks in the pharmaceutical/biotechnology industry sector, and are primarily in companies with which we have research and development, licensing or other collaborative agreements. We typically do not attempt to reduce or eliminate our market exposure on these securities. As of September 30, 2002, long-term investments were $44.6 million.

We are exposed to foreign exchange rate fluctuations as the financial results of our foreign operations are translated into U.S. dollars in consolidation. As exchange rates vary, these results, when translated, may vary from expectations and adversely impact our financial position or results of operations. All of our revenues are denominated in U.S. dollars. We do not enter into forward exchange contracts as a hedge against foreign currency exchange risk on transactions denominated in foreign currencies or for speculative or trading purposes. If currency exchange rates were to fluctuate immediately and uniformly by 10% from levels as of September 30, 2002, the impact to our financial position or results of operations would not be material.

Item 4: Controls and Procedures

(a) Evaluation of disclosure controls and procedures. Within the ninety-day period prior to the filing date of this report, an evaluation was performed under the supervision and with the participation of the Company's management, including the Chief Executive Officer and Chief Financial Officer, of the effectiveness of the Company's disclosure controls and procedures (as defined in Rule 13a-14(c) under the Securities Exchange Act of 1934). Based on the evaluation, the Chief Executive Officer and Chief Financial Officer concluded that the Company's disclosure controls and procedures were effective.

(b) Changes in internal controls. There have been no significant changes in the Company's internal controls or in other factors that could significantly affect internal controls subsequent to their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

PART II: OTHER INFORMATION

Item 1: Legal Proceedings

Affymetrix

On December 21, 2001, the Company agreed to settle the following existing patent infringement litigation with Affymetrix, Inc.: Affymetrix, Inc. v. Synteni, Inc. and Incyte Pharmaceuticals, Inc., Case Nos. C 99-21164 JF and C 99-21165 JF (N.D. Cal.); Incyte Genomics, Inc. v. Affymetrix, Inc., Case No. C 01-20065 JF (N.D. Cal.); and the Incyte Opposition to Affymetrix's European Patent No. EP 0 619 321. The first lawsuit involved several of Affymetrix's microarray-related patents (U.S. Patent Nos. 5,445,934, 5,744,305 and 5,800,992). The second lawsuit involved the Company's RNA amplification patents (U.S. Patent Nos. 5,716,785 and 5,891,636) and two additional microarray-related patents held by Affymetrix (U.S. Patent Nos. 5,871,928 and 6,040,193). As a part of the settlement, the companies have agreed to certain non-exclusive, royalty-bearing licenses and an internal use license under their respective intellectual property portfolios. Pursuant to the settlement, the Company received a net cash settlement that was recorded as revenue in 2001. This settlement does not include the Company's appeal before the United States District Court for the Northern District of California seeking de novo review of the Board of Patent Appeals and Interferences' decision relating to patent applications licensed by the Company from Stanford University (Case No. C99-21111JF). There can be no assurances as to the outcome of that appeal.

Invitrogen

On October 17, 2001, Invitrogen Corporation filed a complaint for patent infringement against the Company in the United States District Court for the District of Delaware. On November 21, 2001, the Company filed its answer to Invitrogen's complaint. In addition, the Company asserted seven counterclaims against Invitrogen seeking declaratory relief with respect to the patents at issue, implied license, estoppel, laches, and patent misuse. The Company also seeks its fees, costs, and expenses. Invitrogen filed its answer to the Company's counterclaims on January 9, 2002. The parties are presently engaged in discovery. The Company believes it has meritorious defenses and intends to defend vigorously the suit brought by Invitrogen.

On November 21, 2001, the Company filed a complaint against Invitrogen as amended on December 21, 2001 and March 7, 2002, in the United States District Court for the Southern District of California alleging infringement of thirteen of the Company's patents. Eight of the asserted patents (U.S. patent numbers 5,633,149, 5,637,462, 5,817,497, 5,840,535, 5,919,686, 5,925,542, 5,962,263, and 5,789,198) are gene patents. Three of the patents (U.S. patent numbers 5,716,785, 5,891,636, and 6,291,170) relate to RNA amplification and gene expression. Two of the patents (U.S. patent numbers 5,807,522 and 6,110,426) relate to methods of fabricating microarrays of biological samples. The complaint seeks a permanent injunction enjoining Invitrogen from further infringement of the patents at issue, damages for Invitrogen's conduct, as well as the Company's fees, costs, and interest. The Company further seeks triple damages based on Invitrogen's willful infringement of the Company's patents.

On April 2, 2002, Invitrogen filed its answer to the Company's complaint and brought counterclaims against the Company seeking declaratory judgments that the patents in suit are invalid and not infringed, and that one patent (U.S. patent number 6,110,426) is unenforceable. On April 25, 2002, the Company filed its answer to Invitrogen's counterclaims. On May 24, 2002, Invitrogen withdrew its affirmative defense and counterclaim alleging that the '426 patent is unenforceable.

Invitrogen has represented to the Court that its past sales of the eight GeneStorm cDNA clones charged with infringement of U.S. Patent Nos. 5,633,149, 5,637,462, 5,789,198, 5,817,497, 5,840,535, 5,919,686, 5,925,542 and 5,962,263 were not substantial and that it no longer sells these products. The parties are presently engaged in discovery concerning the RNA amplification and gene expression and the microarray fabrication patents.

The Company believes it has meritorious defenses and intends to defend vigorously the suit brought by Invitrogen. However, the Company's defenses may be unsuccessful. At this time, the Company cannot reasonably estimate the possible range of any loss resulting from this suit due to uncertainty regarding the ultimate outcome. Further, there can be no assurance that any license that may be required as a result of this litigation or the outcome thereof would be made available on commercially acceptable terms, if at all. Regardless of the outcome, the Invitrogen litigation is expected to result in substantial future costs to the Company.

Item 6: Exhibits and Reports on Form 8-K

a) Exhibits

Exhibit Number	Description of Document
3(ii)	Bylaws of the Company, as amended as of June 4, 2002.
10.44†	Letter Agreement, dated September 5, 2002, between Incyte Genomics, Inc. and Schering-Plough Ltd.

b) Reports on Form 8-K

None

† Confidential treatment has been requested with respect to certain portions of this agreement.

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.

INCYTE GENOMICS, INC.

Dated: November 14, 2002

By: /s/ PAUL A. FRIEDMAN

Paul A. Friedman
Chief Executive Officer
(Principal Executive Officer)

Dated: November 14, 2002

By: /s/ JOHN M. VUKO

John M. Vuko
Chief Financial Officer
(Principal Executive Officer)

Certification

I, Paul A. Friedman, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Incyte Genomics, Inc.;

2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;

3. Based on my knowledge, the financial statements and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:

   a. designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;

   b. evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and

   c. presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

   a. all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

   b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officer and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: November 14, 2002

/s/ PAUL A. FRIEDMAN

Paul A. Friedman
Chief Executive Officer

Certification

I, John M. Vuko, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Incyte Genomics, Inc.;

2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;

3. Based on my knowledge, the financial statements and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:

   a. designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;

   b. evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and

   c. presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

   a. all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

   b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officer and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: November 14, 2002

/s/ JOHN M. VUKO

John M. Vuko
Chief Financial Officer

COMPLIANCE WITH CERTIFICATION REQUIREMENTS

The certification by such officers of this report on Form 10-Q, as required by Section 906 of the Sarbanes-Oxley Act of 2002, has been submitted to the SEC as additional correspondence accompanying this report.

INCYTE GENOMICS, INC.

EXHIBIT INDEX

Exhibit Number	Description of Document
3(ii)	Bylaws of the Company, as amended as of June 4, 2002
10.44†	Letter Agreement, dated September 5, 2002, between Incyte Genomics, Inc. and Schering-Plough Ltd.

† Confidential treatment has been requested with respect to certain portions of this agreement.

BYLAWS
OF
INCYTE GENOMICS, INC.

(amended as of June 4, 2002)

ARTICLE I

MEETINGS OF STOCKHOLDERS

Section 1. Place of Meetings. All meetings of the stockholders shall be held at such place within or without the State of Delaware as may be fixed from time to time by the board of directors or the chief executive officer, or if not so designated, at the registered office of the corporation.

Section 2. Annual Meeting. Annual meetings of stockholders shall be held at such date and time as shall be designated from time to time by the board of directors or the chief executive officer and stated in the notice of meeting. At the annual meeting the stockholders shall elect by a plurality vote a board of directors and shall transact such other business as may properly be brought before the meeting.

To be properly brought before the annual meeting, business must be either (a) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the board of directors or the chief executive officer, (b) otherwise properly brought before the meeting by or at the direction of the board of directors or the chief executive officer, or (c) otherwise properly brought before the meeting by a stockholder of record. In addition to any other applicable requirements, for business to be properly brought before the annual meeting by a stockholder, the stockholder must have given timely notice thereof in writing to the secretary of the corporation. To be timely, a stockholder's notice must be delivered by a nationally recognized courier service or mailed by first class United States mail, postage or delivery charges prepaid, and received at the principal executive offices of the corporation, addressed to the attention of the secretary of the corporation, not less than 60 days nor more than 90 days prior to the scheduled date of the meeting (regardless of any postponements, deferrals or adjournments of that meeting to a later date); provided, however, that in the event that less than 70 days' notice or prior public disclosure of the date of the scheduled meeting is given or made to stockholders, notice by the stockholder to be timely must be so received not later than the earlier of (a) the close of business on the 10th day following the day on which such notice of the date of the scheduled annual meeting was mailed or such public disclosure was made, whichever first occurs, and (b) two days prior to the date of the scheduled meeting. A stockholder's notice to the secretary shall set forth as to each matter the stockholder proposes to bring before the annual meeting (i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (ii) the name and record address of the stockholder proposing such business, (iii) the class, series and number of shares of the corporation that are owned beneficially by the stockholder, and (iv) any material interest of the stockholder in such business. Notwithstanding anything in these bylaws to the contrary, no business shall be conducted at the annual meeting except in accordance with the procedures set

forth in this Section; provided, however, that nothing in this Section shall be deemed to preclude discussion by any stockholder of any business properly brought before the annual meeting.

The chairman of the board of the corporation (or such other person presiding at the meeting in accordance with these bylaws) shall, if the facts warrant, determine and declare to the meeting that business was not properly brought before the meeting in accordance with the provisions of this Section, and if he should so determine, he shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted.

Section 3. Special Meetings. Special meetings of the stockholders, for any purpose or purposes, may, unless otherwise prescribed by statute or by the certificate of incorporation, be called only by the board of directors or the chief executive officer and shall be called by the chief executive officer or secretary at the request in writing of a majority of the board of directors. Such request shall state the purpose or purposes of the proposed meeting. Business transacted at any special meeting shall be limited to matters relating to the purpose or purposes stated in the notice of meeting.

Section 4. Notice of Meetings. Except as otherwise provided by law, written notice of each meeting of stockholders, annual or special, stating the place, date and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given not less than ten nor more than sixty days before the date of the meeting, to each stockholder entitled to vote at such meeting.

Section 5. Voting List. The officer who has charge of the stock ledger of the corporation shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city or town where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

Section 6. Quorum. The holders of a majority of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business, except as otherwise provided by statute, the certificate of incorporation or these bylaws.

Section 7. Adjournments. Any meeting of stockholders may be adjourned from time to time to any other time and to any other place at which a meeting of stockholders may be held under these bylaws, which time and place shall be announced at the meeting, by a majority of the stockholders present in person or represented by proxy at the meeting and entitled to vote, though less than a quorum, or, if no stockholder is present or represented by proxy, by any officer entitled to preside at or to act as secretary of such meeting, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted

which might have been transacted at the original meeting. If the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 8. Action at Meetings. When a quorum is present at any meeting, the vote of the holders of a majority of the stock present in person or represented by proxy and entitled to vote on the question shall decide any question brought before such meeting, unless the question is one upon which by express provision of law, the certificate of incorporation or these bylaws, a different vote is required, in which case such express provision shall govern and control the decision of such question.

Section 9. Voting and Proxies. Unless otherwise provided in the certificate of incorporation, each stockholder shall at every meeting of the stockholders be entitled to one vote for each share of capital stock having voting power held of record by such stockholder. Each stockholder entitled to vote at a meeting of stockholders, or to express consent or dissent to corporate action in writing without a meeting, may authorize another person or persons to act for him by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period.

Section 10. Action Without Meeting. Any action required to be taken at any annual or special meeting of stockholders, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

ARTICLE II

DIRECTORS

Section 1. Number, Election, Tenure and Qualification. The number of directors which shall constitute the whole board of directors shall not be less than one (1) nor more than twelve (12), and the exact number of directors shall be ten (10) until changed by resolution of the board of directors. Within such limit, the number of directors which shall constitute the whole board of directors shall be fixed from time to time by resolution of the board of directors. The directors shall be elected at the annual meeting or at any special meeting of the stockholders, except as provided in Section 3 of this Article, and each director elected shall hold office until his successor is elected and qualified, unless sooner displaced. Directors need not be stockholders.

Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors. Nominations of persons for election to the board of directors at the annual meeting, by or at the direction of the board of directors, may be made by any

nominating committee or person appointed by the board of directors; nominations may also be made by any stockholder of record of the corporation entitled to vote for the election of directors at the meeting who complies with the notice procedures set forth in this Section. Such nominations, other than those made by or at the direction of the board of directors, shall be made pursuant to timely notice in writing to the secretary of the corporation. To be timely, a stockholder's notice shall be delivered by a nationally recognized courier service or mailed by first class United States mail, postage or delivery charges prepaid, and received at the principal executive offices of the corporation addressed to the attention of the secretary of the corporation not less than 60 days nor more than 90 days prior to the scheduled date of the meeting (regardless of any postponements, deferrals or adjournments of that meeting to a later date); provided, however, that, in the case of an annual meeting and in the event that less than 70 days' notice or prior public disclosure of the date of the scheduled meeting is given or made to stockholders, notice by the stockholder to be timely must be so received not later than the earlier of (a) the close of business on the 10th day following the day on which such notice of the date of the scheduled meeting was mailed or such public disclosure was made, whichever first occurs, or (b) two days prior to the date of the scheduled meeting. Such stockholder's notice to the secretary shall set forth (a) as to each person whom the stockholder proposes to nominate for election or reelection as a director, (i) the name, age, business address and residence address of the person, (ii) the principal occupation or employment of the person, (iii) the class, series and number of shares of capital stock of the corporation that are owned beneficially by the person, (iv) a statement as to the person's citizenship, and (v) any other information relating to the person that is required to be disclosed in solicitations for proxies for election of directors pursuant to Section 14 of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder; and (b) as to the stockholder giving the notice, (i) the name and record address of the stockholder and (ii) the class, series and number of shares of capital stock of the corporation that are owned beneficially by the stockholder. The corporation may require any proposed nominee to furnish such other information as may reasonably be required by the corporation to determine the eligibility of such proposed nominee to serve as director of the corporation. No person shall be eligible for election as a director of the corporation unless nominated in accordance with the procedures set forth herein.

In connection with any annual meeting, the chairman of the board of directors (or such other person presiding at such meeting in accordance with these by-laws) shall, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the foregoing procedure, and if he should so determine, he shall so declare to the meeting and the defective nomination shall be disregarded.

Section 2. Enlargement. The number of the board of directors may be increased at any time by vote of a majority of the directors then in office.

Section 3. Vacancies. Vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director, and the directors so chosen shall hold office until the next annual election and until their successors are duly elected and shall qualify, unless sooner displaced. If there are no directors in office, then an election of directors may be held in the manner provided by statute. In the event of a vacancy in the board

of directors, the remaining directors, except as otherwise provided by law or these bylaws, may exercise the powers of the full board until the vacancy is filled.

Section 4. Resignation and Removal. Any director may resign at any time upon written notice to the corporation at its principal place of business or to the chief executive officer or the secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event. Any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors, unless otherwise specified by law or the certificate of incorporation.

Section 5. General Powers. The business and affairs of the corporation shall be managed by its board of directors, which may exercise all powers of the corporation and do all such lawful acts and things as are not by statute or by the certificate of incorporation or by these bylaws directed or required to be exercised or done by the stockholders.

Section 6. Chairman of the Board. If the board of directors appoints a chairman of the board, he shall, when present, preside at all meetings of the stockholders and the board of directors. He shall perform such duties and possess such powers as are customarily vested in the office of the chairman of the board or as may be vested in him by the board of directors.

Section 7. Place of Meetings. The board of directors may hold meetings, both regular and special, either within or without the State of Delaware.

Section 8. Regular Meetings. Regular meetings of the board of directors may be held without notice at such time and at such place as shall from time to time be determined by the board; provided that any director who is absent when such a determination is made shall be given prompt notice of such determination. A regular meeting of the board of directors may be held without notice immediately after and at the same place as the annual meeting of stockholders.

Section 9. Special Meetings. Special meetings of the board may be called by the chief executive officer, secretary, or on the written request of two or more directors, or by one director in the event that there is only one director in office. Two days notice to each director, either personally or by telegram, cable, telecopy, commercial delivery service, telex or similar means sent to his business or home address, or three days notice by written notice deposited in the mail, shall be given to each director by the secretary or by the officer or one of the directors calling the meeting. A notice or waiver of notice of a meeting of the board of directors need not specify the purposes of the meeting.

Section 10. Quorum, Action at Meeting, Adjournments. At all meetings of the board, a majority of directors then in office, but in no event less than one third of the entire board, shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the board of directors, except as may be otherwise specifically provided by law or by the certificate of incorporation. For purposes of this section, the term “entire board” shall mean the number of directors last fixed by the stockholders or directors, as the case may be, in accordance with law and these bylaws; provided, however, that if less than all the number so fixed of directors were elected, the “entire

board" shall mean the greatest number of directors so elected to hold office at any one time pursuant to such authorization. If a quorum shall not be present at any meeting of the board of directors, a majority of the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 11. Action by Consent. Unless otherwise restricted by the certificate of incorporation or these bylaws, any action required or permitted to be taken at any meeting of the board of directors or of any committee thereof may be taken without a meeting, if all members of the board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the board or committee.

Section 12. Telephonic Meetings. Unless otherwise restricted by the certificate of incorporation or these bylaws, members of the board of directors or of any committee thereof may participate in a meeting of the board of directors or of any committee, as the case may be, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

Section 13. Committees. The board of directors may, by resolution passed by a majority of the whole board, designate one or more committees, each committee to consist of one or more of the directors of the corporation. The board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Any such committee, to the extent provided in the resolution of the board of directors, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to amending the certificate of incorporation, adopting an agreement of merger or consolidation, recommending to the stockholders the sale, lease or exchange of all or substantially all of the corporation's property and assets, recommending to the stockholders a dissolution of the corporation or a revocation of a dissolution, or amending the bylaws of the corporation; and, unless the resolution designating such committee or the certificate of incorporation expressly so provide, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the board of directors. Each committee shall keep regular minutes of its meetings and make such reports to the board of directors as the board of directors may request. Except as the board of directors may otherwise determine, any committee may make rules for the conduct of its business, but unless otherwise provided by the directors or in such rules, its business shall be conducted as nearly as possible in the same manner as is provided in these bylaws for the conduct of its business by the board of directors.

Section 14. Compensation. Unless otherwise restricted by the certificate of incorporation or these bylaws, the board of directors shall have the authority to fix from time to time the compensation of directors. The directors may be paid their expenses, if any, of attendance at each meeting of the board of directors and the performance of their responsibilities as directors and may be paid a fixed sum for attendance at each meeting of the board of directors and/or a stated salary as director. No such payment shall preclude any director from serving the

corporation or its parent or subsidiary corporations in any other capacity and receiving compensation therefor. The board of directors may also allow compensation for members of special or standing committees.

ARTICLE III

OFFICERS

Section 1. Enumeration. The officers of the corporation shall be chosen by the board of directors and shall be a president, a secretary and a treasurer and such other officers with such titles, terms of office and duties as the board of directors may from time to time determine, including a chairman of the board, one or more vice-presidents, and one or more assistant secretaries and assistant treasurers. If authorized by resolution of the board of directors, the chief executive officer may be empowered to appoint from time to time assistant secretaries and assistant treasurers. Any number of offices may be held by the same person, unless the certificate of incorporation or these bylaws otherwise provide.

Section 2. Election. The board of directors at its first meeting after each annual meeting of stockholders shall choose a president, a secretary and a treasurer. Other officers may be appointed by the board of directors at such meeting, at any other meeting, or by written consent.

Section 3. Tenure. The officers of the corporation shall hold office until their successors are chosen and qualify, unless a different term is specified in the vote choosing or appointing him, or until his earlier death, resignation or removal. Any officer elected or appointed by the board of directors or by the chief executive officer may be removed at any time by the affirmative vote of a majority of the board of directors or a committee duly authorized to do so, except that any officer appointed by the chief executive officer may also be removed at any time by the chief executive officer. Any vacancy occurring in any office of the corporation may be filled by the board of directors, at its discretion. Any officer may resign by delivering his written resignation to the corporation at its principal place of business or to the chief executive officer or the secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.

Section 4. President. The president shall be the chief operating officer of the corporation. He shall also be the chief executive officer unless the board of directors otherwise provides. The president shall, unless the board of directors provides otherwise in a specific instance or generally, preside at all meetings of the stockholders and the board of directors, have general and active management of the business of the corporation and see that all orders and resolutions of the board of directors are carried into effect. The president shall execute bonds, mortgages, and other contracts requiring a seal, under the seal of the corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the board of directors to some other officer or agent of the corporation.

Section 5. Vice-Presidents. In the absence of the president or in the event of his inability or refusal to act, the vice-president, or if there be more than one vice-president, the vice-

presidents in the order designated by the board of directors or the chief executive officer (or in the absence of any designation, then in the order determined by their tenure in office) shall perform the duties of the president, and when so acting, shall have all the powers of and be subject to all the restrictions upon the president. The vice-presidents shall perform such other duties and have such other powers as the board of directors or the chief executive officer may from time to time prescribe.

Section 6. Secretary. The secretary shall have such powers and perform such duties as are incident to the office of secretary. He shall maintain a stock ledger and prepare lists of stockholders and their addresses as required and shall be the custodian of corporate records. The secretary shall attend all meetings of the board of directors and all meetings of the stockholders and record all the proceedings of the meetings of the corporation and of the board of directors in a book to be kept for that purpose and shall perform like duties for the standing committees when required. He shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the board of directors, and shall perform such other duties as may be from time to time prescribed by the board of directors or chief executive officer, under whose supervision he shall be. He shall have custody of the corporate seal of the corporation and he, or an assistant secretary, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by his signature or by the signature of such assistant secretary. The board of directors may give general authority to any other officer to affix the seal of the corporation and to attest the affixing by his signature.

Section 7. Assistant Secretaries. The assistant secretary, or if there be more than one, the assistant secretaries in the order determined by the board of directors, the chief executive officer or the secretary (or if there be no such determination, then in the order determined by their tenure in office), shall, in the absence of the secretary or in the event of his inability or refusal to act, perform the duties and exercise the powers of the secretary and shall perform such other duties and have such other powers as the board of directors, the chief executive officer or the secretary may from time to time prescribe. In the absence of the secretary or any assistant secretary at any meeting of stockholders or directors, the person presiding at the meeting shall designate a temporary or acting secretary to keep a record of the meeting.

Section 8. Treasurer. The treasurer shall perform such duties and shall have such powers as may be assigned to him by the board of directors or the chief executive officer. In addition, the treasurer shall perform such duties and have such powers as are incident to the office of treasurer. The treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the board of directors. He shall disburse the funds of the corporation as may be ordered by the board of directors, taking proper vouchers for such disbursements, and shall render to the chief executive officer and the board of directors, when the chief executive officer or board of directors so requires, an account of all his transactions as treasurer and of the financial condition of the corporation.

Section 9. Assistant Treasurers. The assistant treasurer, or if there shall be more than one, the assistant treasurers in the order determined by the board of directors, the chief executive officer or the treasurer (or if there be no such determination, then in the order determined by their

tenure in office), shall, in the absence of the treasurer or in the event of his inability or refusal to act, perform the duties and exercise the powers of the treasurer and shall perform such other duties and have such other powers as the board of directors, the chief executive officer or the treasurer may from time to time prescribe.

Section 10. Bond. If required by the board of directors, any officer shall give the corporation a bond in such sum and with such surety or sureties and upon such terms and conditions as shall be satisfactory to the board of directors, including without limitation a bond for the faithful performance of the duties of his office and for the restoration to the corporation of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control and belonging to the corporation.

ARTICLE IV

NOTICES

Section 1. Delivery. Whenever, under the provisions of law, or of the certificate of incorporation or these bylaws, written notice is required to be given to any director or stockholder, such notice may be given by mail, addressed to such director or stockholder, at his address as it appears on the records of the corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Unless written notice by mail is required by law, written notice may also be given by telegram, cable, telecopy, commercial delivery service, telex or similar means, addressed to such director or stockholder at his address as it appears on the records of the corporation, in which case such notice shall be deemed to be given when delivered into the control of the persons charged with effecting such transmission, the transmission charge to be paid by the corporation or the person sending such notice and not by the addressee. Oral notice or other in-hand delivery (in person or by telephone) shall be deemed given at the time it is actually given.

Section 2. Waiver of Notice. Whenever any notice is required to be given under the provisions of law or of the certificate of incorporation or of these bylaws, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

ARTICLE V

INDEMNIFICATION

Section 1. Actions Other than by or in the Right of the Corporation. Subject to Section 4 of this Article V, the corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement

actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceedings, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

Section 2. Actions by or in the Right of the Corporation. Subject to Section 4 of this Article V, the corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery of the State of Delaware or such other court shall deem proper.

Section 3. Success on the Merits. To the extent that any person described in Section 1 or 2 of this Article V has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in said Sections, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

Section 4. Specific Authorization. Any indemnification under Section 1 or 2 of this Article V (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in Section 1 or 2, as the case may be, of this Article V. Such determination shall be made (1) by the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (2) if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by the stockholders of the corporation.

Section 5. Advance Payment. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding as authorized by the board of directors in the manner provided for in Section 4 of this Article V upon receipt of an undertaking by or on behalf of any person

described in said Section to repay such amount unless it shall ultimately be determined that he is entitled to indemnification by the corporation as authorized in this Article V.

Section 6. Non-Exclusivity. The indemnification and advancement of expenses provided by this Article V shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be director, officer, employee or agent of the corporation and shall inure to the benefit of the heirs, executors and administrators of such a person; provided, however, that any repeal or amendment of any of the provisions of this Article V shall not adversely affect any right or protection of any indemnitee existing at the time of such repeal or amendment.

Section 7. Insurance. The board of directors may authorize, by a vote of the majority of the full board, the corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this Article V.

Section 8. Severability. If any word, clause or provision of this Article V or any award made hereunder shall for any reason be determined to be invalid, the provisions hereof shall not otherwise be affected thereby but shall remain in full force and effect.

Section 9. Intent of Article. The intent of this Article V is to provide for indemnification to the fullest extent not prohibited by section 145 of the General Corporation Law of Delaware. To the extent that such Section or any successor section may be amended or supplemented from time to time, this Article V shall be amended automatically and construed so as to permit indemnification to the fullest extent from time to time not prohibited by law.

ARTICLE VI

CAPITAL STOCK

Section 1. Certificates of Stock. Every holder of stock in the corporation shall be entitled to have a certificate, signed by, or in the name of the corporation by, the chairman or vice-chairman of the board of directors, or the president or a vice-president and the treasurer or an assistant treasurer, or the secretary or an assistant secretary of the corporation, certifying the number of shares owned by him in the corporation. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue. Certificates may be issued for partly paid shares and in such case upon the face or back of the

certificates issued to represent any such partly paid shares, the total amount of the consideration to be paid therefor, and the amount paid thereon shall be specified.

Section 2. Lost Certificates. The board of directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the board of directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his legal representative, to give reasonable evidence of such loss, theft or destruction, to advertise the same in such manner as it shall require and/or to give the corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen or destroyed or the issuance of such new certificate.

Section 3. Transfer of Stock. Upon surrender to the corporation or the transfer agent of the corporation of a certificate for shares, duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, and proper evidence of compliance with other conditions to rightful transfer, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

Section 4. Record Date. In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the board of directors may fix, in advance, a record date, which shall not be more than sixty days nor less then ten days before the date of such meeting, nor more than sixty days prior to any other action to which such record date relates. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the board of directors may fix a new record date for the adjourned meeting. If no record date is fixed, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day before the day on which notice is given, or, if notice is waived, at the close of business on the day before the day on which the meeting is held. The record date for determining stockholders entitled to express consent to corporate action in writing without a meeting, when no prior action by the board of directors is necessary, shall be the day on which the first written consent is expressed. The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the board of directors adopts the resolution relating to such purpose.

Section 5. Registered Stockholders. The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE VII

CERTAIN TRANSACTIONS

Section 1. Transactions with Interested Parties. No contract or transaction between the corporation and one or more of its directors or officers, or between the corporation and any other corporation, partnership, association or other organization in which one or more of its directors or officers are directors or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the board or committee thereof which authorizes the contract or transaction or solely because his or their votes are counted for such purpose, if:

(a) the material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the board of directors or the committee, and the board or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or

(b) The material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or

(c) The contract or transaction is fair as to the corporation as of the time it is authorized, approved or ratified, by the board of directors, a committee thereof, or the stockholders.

Section 2. Quorum. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or of a committee which authorizes the contract or transaction.

ARTICLE VIII

GENERAL PROVISIONS

Section 1. Dividends. Dividends upon the capital stock of the corporation, if any, may be declared by the board of directors at any regular or special meeting or by written consent, pursuant to law. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the certificate of incorporation.

Section 2. Reserves. The directors may set apart out of any funds of the corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve.

Section 3. Checks. All checks or demands for money and notes of the corporation shall be signed by such officer or officers or such other person or persons as the board of directors may from time to time designate.

Section 4. Fiscal Year. The fiscal year of the corporation shall be fixed by resolution of the board of directors.

Section 5. Seal. The board of directors may, by resolution, adopt a corporate seal. The corporate seal shall have inscribed thereon the name of the corporation, the year of its organization and the word “Delaware.” The seal may be used by causing it or a facsimile thereof to be impressed or affixed or otherwise reproduced. The seal may be altered from time to time by the board of directors.

ARTICLE IX

AMENDMENTS

These bylaws may be altered, amended or repealed or new bylaws may be adopted by the stockholders or by the board of directors, when such power is conferred upon the board of directors by the certificate of incorporation, at any regular meeting of the stockholders or of the board of directors or at any special meeting of the stockholders or of the board of directors provided, however, that in the case of a regular or special meeting of stockholders, notice of such alteration, amendment, repeal or adoption of new bylaws be contained in the notice of such meeting.

Exhibit 10.44

CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS OF THIS DOCUMENT HAVE BEEN REDACTED AND HAVE BEEN SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

September 5, 2002

Schering-Plough Ltd.
Toepferstrasse 5
CH6004 Lucerne
Switzerland
ATTN: David Poorvin, Prokurist

Schering-Plough Research Institute
2015 Galloping Hill Road
Kennilworth, New Jersey 07033
ATTN: Cecil B. Pickett, President

cc: Schering Corporation
Vice President, Business Development
Staff Vice President, Licensing

RE: Termination and Release of Collaborative Agreements, GEM Services Agreement and Custom Sequencing Services Agreement

Dear Sirs:

This letter is to confirm the understanding of the parties with respect to the following agreements:

(i) the two Collaborative Agreements, each dated as of September 30, 1998, by and between Incyte Genomics, Inc., formerly known as Incyte Pharmaceuticals, Inc. ("Incyte"), and each of Schering-Plough Ltd. ("SPL") and Schering Corporation ("SC"), respectively, and each as amended on November 14, 2000 (collectively, the "Collaborative Agreements");

(ii) the Incyte Custom Sequencing Services Agreement, dated as of September 25, 2001, by and between Incyte and Schering-Plough Research Institute ("SPRI") (the "Sequencing Agreement"); and

(iii) the GEM Services Agreement, dated as of September 30, 1998, by and between Incyte and SPRI, as amended on November 14, 2000 (the "GEM Agreement")

The Collaborative Agreements, the Sequencing Agreement, and the GEM Agreement are herein collectively referred to as the "Agreements". SPL, SC and SPRI are together referred to herein as "Schering". Capitalized terms not expressly defined herein shall have the meanings set forth in the Collaborative Agreements, the Sequencing Agreement and/or the GEM Agreement, as applicable.

The parties have determined that it is no longer in each party's best interest to continue under the Agreements. The Parties agree that notwithstanding anything in the Agreements to the contrary, that the parties rights and obligations following such termination shall be governed by the terms and conditions set forth in this letter of agreement.

In connection with the termination of the Agreements, the parties wish to resolve any and all disputes between the parties related to the Agreements and to release each party from any liabilities, claims or obligations of either party arising in connection with the Agreements.

In view of the foregoing, the parties hereby agree as follows:

A. Termination of Agreements

1. Effective as of the last date of signature appearing below (the "Termination Date"), the parties hereby terminate the Agreements in their entirety. Except as expressly set forth in this letter of agreement, no provisions of any of the Agreements (including any provisions therein that are expressly identified in the Agreements as surviving termination) shall be of any further force or effect. Without limiting the foregoing, and for clarification purposes only, the parties agree that, as of the Termination Date:

   · All licenses and other rights (including without limitation all licenses granted pursuant to Section 3 of the Collaborative Agreements) granted pursuant to the Agreements are hereby rescinded.

   · Incyte shall own all right, title and interest in and to the Gene Products and the Incyte Technology provided to SPL and SC, or their Affiliates, under the Collaborative Agreements.

2. Except as expressly set forth in paragraph A.5 of this letter of agreement, nothing herein shall be construed as granting or conveying (by implication, estoppel or otherwise) (i) to Schering or its Affiliates any license, title or other right in or to any of Incyte's patent applications, patents, trademarks or other intellectual property of Incyte (including without limitation the Incyte Patent Rights and Incyte Know-How), or (ii) to Incyte or its Affiliates any license, title or other right in or to any of Schering's patent applications, patents, trademarks or other intellectual property.

3. Schering hereby represents and warrants to Incyte that as of the Termination Date Schering and its Affiliates does not have any ongoing research and development programs ***. Schering further represents and warrants to Incyte that as of the Termination Date it has not discovered or developed any Products through use of the ***.

4. Effective as of the Termination Date, Schering shall (i) immediately discontinue any and all use of all LifeSeq Database Products and Database Information, (ii) promptly remove the LifeSeq Database Products from each Installation Site and Remote Site, and (iii) promptly return to Incyte and/or destroy and certify in writing to Incyte as to such destruction, all copies of the LifeSeq Database Products and Database Information in its possession or control, including all components thereof.

5. Schering and its Affiliates shall retain the right to use any and all data, information and materials received from Incyte under the GEM Services Agreement or the Sequencing Agreement for any and all purposes. This will include, without limitation, the right to retain and use data and information (including data and information derived from LifeSeq Database Products) necessary to identify the sequences of the GEM Elements contained in any GEM Arrays provided to Schering under the GEM Services Agreement.

6. The parties' rights and obligations under Sections 4.4, 7, 8 and 9 of the GEM Services Agreement and under Sections 2, 3 and 4 of the Sequencing Agreement shall survive and remain in full force and effect after the Termination Date.

B. Consideration

1. In consideration for the releases granted by Schering hereunder, Incyte shall pay to Schering a total of *** U.S. dollars (USD $ ***). Such amount shall be payable in *** equal installments of *** dollars each ***, with the *** such payment due within three (3) business days after the Termination Date and the *** payment due on or before ***. All such payments shall be made by wire transfer of immediately available funds to an account designated by Schering.

C. Settlement and Release of Liability under the Agreements

1. Schering, on behalf of itself, its Affiliates, and its and their respective officers, directors, employees, agents, successors and assigns hereby forever and irrevocably releases and discharges Incyte, its Affiliates, and its and their respective officers, directors, employees, agents, successors and assigns from and against any and all suits, claims, counterclaims, causes of action or demands arising out of, in connection with, or relating to, any of the Agreements which Schering has asserted or could have asserted under the Agreements, and with respect to all debts, costs, expenses, damages, losses, injuries and liabilities, of whatever kind or nature, in law or equity, related thereto.

2. Incyte, on behalf of itself, its Affiliates, and its and their respective officers, directors, employees, agents, successors and assigns hereby forever and irrevocably releases and discharges Schering, its Affiliates, and its and their respective officers, directors, employees, agents, successors and assigns from and

against any and all suits, claims, counterclaims, causes of action or demands arising out of, in connection with, or relating to, any of the Agreements which Incyte has asserted or could have asserted under the Agreements, and with respect to all debts, costs, expenses, damages, losses, injuries and liabilities, of whatever kind or nature, in law or equity, related thereto.

3. The parties have each been fully advised of the contents of Section 1542 of the Civil Code of the State of California ("§1542"), which reads as follows:

> **"Section 1542. General Release; Extent**
> **A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."**

Each of Schering and Incyte expressly waives and relinquishes any and all rights and benefits under §1542, and any analogous laws or common law principle of any state or territory in the United States and any foreign jurisdiction, with respect to the claims released hereby, and expressly consents that the releases granted herein will be given full force and effect, including with respect to the release of any claims under the Agreements that are unknown or unsuspected.

Each of the parties expressly and knowingly acknowledges that it may, after the Termination Date, discover facts different from or in addition to those that it knows or believes to be true as of the Termination Date. Nonetheless, each party agrees that the releases granted by it under this letter of agreement shall be and remain in full force and effect in all respects, notwithstanding such different or additional facts.

D. Miscellaneous Provisions

1. This letter of agreement may be executed in counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same document.

2. None of the parties shall make any press release, disclosure or other form of public statement or disclose to any third party the existence, or the terms and conditions, of this letter of agreement without the prior written consent of the other parties, except to the extent specifically required by law or regulation, or where the specific content of the public statement or disclosure is already public knowledge.

3. This letter of agreement shall be governed, interpreted and construed for all purposes in accordance with the laws of the State of Delaware, without reference to the conflicts of law principles thereof.

4. This letter of agreement constitutes and contains the entire understanding of the parties, and cancels and supersedes any and all prior agreements, understandings, representations or negotiations, whether written or verbal, between the parties with respect to the subject matter hereof.

IN WITNESS THEREOF, the parties hereto have caused this letter of agreement to be executed in duplicate by their duly authorized representatives.

INCYTE GENOMICS, INC.

By: /s/ Lee Bendekgey

Name: Lee Bendekgey

Title: Executive Vice President and General Counsel

Date: September 5, 2002

SCHERING-PLOUGH LTD.

By: /s/ David Poorvin

Name: David Poorvin

Title: Prokurist

Date: 10 September 2002

SCHERING CORPORATION

By: /s/ David Poorvin

Name: David Poorvin

Title: Prokurist

Date: 10 September 2002

SCHERING-PLOUGH RESEARCH INSTITUTE

By: /s/ Cecil Pickett

Name: Cecil Pickett Ph.D.

Title: President

Date: 12 September 2002