

AMERICAN TECHNOLOGY CORP /DE/
Form 10-Q
February 02, 2010
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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

(Mark one)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the quarterly period ended December 31, 2009

or

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

Commission File Number: 000-24248

AMERICAN TECHNOLOGY CORPORATION

(Exact name of registrant as specified in its charter)

Delaware

87-0361799

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(State or other jurisdiction of

(I.R.S. Employer

incorporation or organization)

Identification Number)

15378 Avenue of Science, Ste 100, San Diego,

California

92128

(Address of principal executive offices)

(Zip Code)

(858) 676-1112

(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 has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company
(Do not check if a smaller reporting company)

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

The number of shares of Common Stock, \$0.00001 par value, outstanding on January 29, 2010 was 30,552,498.

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AMERICAN TECHNOLOGY CORPORATION

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	December 31, 2009 (Unaudited)	September 30, 2009
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 4,839,946	\$ 5,102,502
Accounts receivable, less allowance of \$222,864 each period for doubtful accounts	2,414,431	1,463,222
Inventories, net	3,192,715	3,067,675
Prepaid expenses and other	281,203	194,451
Total current assets	10,728,295	9,827,850
Property and equipment, net	192,215	230,432
Patents, net	834,763	897,351
Deposits	58,265	58,265
Total assets	\$ 11,813,538	\$ 11,013,898
LIABILITIES AND STOCKHOLDERS EQUITY		
Current liabilities:		
Accounts payable	\$ 1,187,009	\$ 960,308
Accrued liabilities	1,360,308	2,009,503
Total current liabilities	2,547,317	2,969,811
Commitments and contingencies (Note 14)		
Stockholders equity:		
Preferred stock, \$0.00001 par value; 5,000,000 shares authorized; none issued and outstanding		
Common stock, \$0.00001 par value; 50,000,000 shares authorized; 30,552,498 and 30,535,207 shares issued and outstanding, respectively	306	306
Additional paid-in capital	80,851,788	82,947,945
Accumulated deficit	(71,585,873)	(74,904,164)
Total stockholders equity	9,266,221	8,044,087
Total liabilities and stockholders equity	\$ 11,813,538	\$ 11,013,898

See accompanying notes to interim consolidated financial statements

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(Unaudited)

	For the three months ended December 31,	
	2009	2008
Revenues:		
Product sales	\$ 5,271,282	\$ 2,430,843
Contract, license and other	74,587	62,400
Total revenues	5,345,869	2,493,243
Cost of revenues	2,287,301	1,350,972
Gross profit	3,058,568	1,142,271
Operating expenses:		
Selling, general and administrative	1,198,201	1,586,960
Research and development	551,921	452,458
Total operating expenses	1,750,122	2,039,418
Income (loss) from operations	1,308,446	(897,147)
Other income (expense):		
Interest income	47	16,118
Finance expense	(783)	
Unrealized gain on derivative revaluation	597,016	
Total other income	596,280	16,118
Net income (loss) before provision for income taxes	1,904,726	\$ (881,029)
Provision for income taxes	(85,498)	
Net income (loss)	\$ 1,819,228	\$ (881,029)
Net income (loss) per common share - basic and diluted	\$ 0.06	\$ (0.03)
Weighted average common shares outstanding		
Basic	30,552,498	30,535,207
Diluted	31,130,400	30,535,207

See accompanying notes to interim consolidated financial statements

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CONSOLIDATED STATEMENTS OF CASH FLOWS

(Unaudited)

	For the three months ended December 31,	
	2009	2008
Operating Activities:		
Net Income (loss)	\$ 1,819,228	\$ (881,029)
Adjustments to reconcile net income (loss) to net cash used in operating activities:		
Depreciation and amortization	72,880	69,831
Provision for doubtful accounts		(872)
Warranty provision	55,765	8,180
Inventory obsolescence	7,152	5,404
Share-based compensation	150,823	568,256
Loss on impairment of patents	40,996	36,453
Unrealized gain on derivative revaluation	(597,016)	
Changes in assets and liabilities:		
Accounts receivable	(951,209)	384,137
Inventories	(132,192)	4,110
Prepaid expenses and other	(86,752)	(345)
Accounts payable	226,701	(186,418)
Warranty settlements	(25,398)	(4,168)
Accrued liabilities	(830,463)	(152,559)
Net cash used in operating activities	(249,485)	(149,020)
Investing Activities:		
Purchase of equipment	(8,147)	(99,600)
Patent costs paid	(4,924)	(4,942)
Net cash used in investing activities	(13,071)	(104,542)
Net decrease in cash and cash equivalents	(262,556)	(253,562)
Cash and cash equivalents, beginning of period	5,102,502	2,694,869
Cash and cash equivalents, end of period	\$ 4,839,946	\$ 2,441,307
Supplemental Disclosure of Cash Flow Information		
Cash paid for interest	\$ 783	\$
Cash paid for taxes	\$ 50,000	\$
Supplemental schedule of noncash investing and financing activities:		
Reclassification of warrants from equity to a liability	\$ 747,917	\$
	See accompanying notes to interim consolidated financial statements	

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American Technology Corporation

Notes to Interim Consolidated Financial Statements (unaudited)

1. OPERATIONS

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

The Company has a currently inactive wholly owned subsidiary, American Technology Holdings, Inc., through which the Company intends to conduct international marketing, sales and distribution activities. The consolidated financial statements include the accounts of this subsidiary after elimination of intercompany transactions and accounts.

2. BASIS OF PRESENTATION AND SIGNIFICANT ACCOUNTING POLICIES

General

The accompanying unaudited interim consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America for interim financial information and the instructions to Form 10-Q and Article 8 of Regulation S-X. In the opinion of management, the interim financial statements reflect all adjustments necessary in order to make the financial statements not misleading. The consolidated balance sheet as of September 30, 2009 was derived from the Company's most recent audited financial statements. Operating results for the three month period are not necessarily indicative of the results that may be expected for the year. The interim financial statements and notes thereto should be read in conjunction with the Company's audited financial statements and notes thereto for the year ended September 30, 2009 included in the Company's Annual Report on Form 10-K, as filed with the Securities and Exchange Commission ("SEC") on December 1, 2009.

Revenue Recognition

The Company derives its revenue primarily from two sources: (i) product sales, and (ii) contract and license fees.

Product sales to customers, including resellers and system integrators, are recognized in the periods that products are shipped to customers (FOB shipping point) or received by customers (FOB destination), when the fee is fixed or determinable, when collection of resulting receivables is probable and there are no remaining obligations on the part of the Company. Most sales to resellers and system integrators are based on firm commitments from the end user; as a result resellers and system integrators carry little or no inventory. Revenues from associated engineering and installation contracts are recognized based on milestones or completion of the contracted services. The Company's customers do not have the right to return product unless the product is found to be defective.

In limited circumstances, product sales may be recognized prior to shipment when, based on the Company's evaluation, the criteria specified in ASC 605-10-S99-1 for recognizing revenue under bill and hold arrangements have been met.

The Company provides research and development services and licenses its technology to third parties. Revenues from up-front license and other fees and annual license fees are evaluated for multiple elements but are generally recognized ratably over the specified term of the particular license or agreement. Revenues from ongoing per unit license fees are earned based on units shipped and are recognized in the period when the ultimate customer accepts the product and collection is reasonably assured.

Accounting for Warrant Liability

Based on the Company's adoption of authoritative guidance issued by the Financial Accounting Standards Board ("FASB") in June 2008, as codified in Accounting Standards Codification (ASC) 815-40, Derivatives and Hedging; Contracts in Entity's Own Equity (formerly Emerging Issues Task Force Issue No. 07-5), effective October 1, 2009, certain outstanding warrants were determined to be derivative instruments, and accordingly, the estimated fair value of these warrants was reclassified from equity and recorded as a warrant liability. The cumulative effect of the change in accounting for these warrants was recognized as an adjustment to the opening accumulated deficit balance at October 1, 2009 based on the difference between the fair value of the warrants at issuance and at the reclassification date. The warrant liability is adjusted to fair value at each reporting period and the corresponding change in fair value is recorded as an unrealized gain or loss in current earnings. (See Notes

3 and 10).

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3. RECENT ACCOUNTING PRONOUNCEMENTS

In April 2008, the FASB issued authoritative guidance, as codified in ASC 350-30, *Goodwill and other; General Intangibles Other Than Goodwill* (formerly FSP SFAS 142-3). This guidance provides factors that should be considered in developing the renewal or extension assumptions used to determine the useful life of a recognized intangible asset. This guidance also requires expanded disclosure related to the determination of intangible asset useful lives. It is effective for fiscal years beginning after December 15, 2008. Earlier adoption was not permitted. The adoption of this guidance on October 1, 2009 did not have any impact on the Company's consolidated financial statements.

In June 2008, the FASB issued authoritative guidance, as codified in ASC 815-40, *Derivatives and Hedging; Contracts in Entity's Own Equity* (formerly Emerging Issues Task Force Issue No. 07-5). This guidance provides a two-step model to be applied in determining whether a financial instrument or an embedded feature is indexed to an issuer's own stock and thus able to qualify for the scope exception codified in ASC 815-10 (formerly SFAS No. 133 paragraph 11(a)). The Company adopted this guidance effective October 1, 2009 and determined that warrants granted in 2006 were not equity-linked financial instruments, and accordingly, were derivative instruments. The Company has recorded the fair value of these instruments and the resulting cumulative effect of this change in accounting method, as of October 1, 2009 (See Note 10).

Effective October 1, 2009, the Company adopted new standards regarding business combinations issued by the FASB in December 2007, as codified under ASC 805, *Business Combinations* (formerly FAS 141R) that require the acquisition method to be applied to all transactions and other events in which an entity obtains control over one or more other businesses, requires the acquirer to recognize the fair value of all assets and liabilities acquired, even if less than one hundred percent ownership is acquired, and establishes the acquisition date fair value as measurement date for all assets and liabilities assumed. For the Company, this accounting update was effective on a prospective basis for all business combinations for which the acquisition date is on or after October 1, 2009. Since the Company is not contemplating any business combinations it does not presently expect any impact of adoption on its consolidated financial statements.

In December 2007, the FASB issued authoritative guidance, as codified in ASC 810-10, *Consolidation* (formerly SFAS 160) that establishes accounting and reporting standards for the non-controlling interest in a subsidiary and for the deconsolidation of a subsidiary. This guidance clarifies that a non-controlling interest in a subsidiary is an ownership interest in the consolidated financial statements. This guidance is effective for the Company's fiscal years beginning after December 15, 2008. The provisions of are applied prospectively upon adoption except for the presentation and disclosure requirements that are applied retrospectively. The Company has no non-controlling interests and accordingly the adoption of this guidance effective October 1, 2009 did not have a material impact on the Company's consolidated financial statements.

In September 2009, the FASB issued Accounting Standards Update (ASU) No. 2009-13, *Revenue Recognition (Topic 605) Multiple Deliverable Arrangements* (formerly EITF Issue 08-1). This guidance updates the existing multiple-element revenue arrangements guidance currently included under ASC 605-25, which originated primarily from the guidance in EITF Issue No. 00-21, *Revenue Arrangements with Multiple Deliverables*. The revised guidance primarily provides two significant changes: 1) eliminates the need for objective and reliable evidence of the fair value for the undelivered element in order for a delivered item to be treated as a separate unit of accounting, and 2) eliminates the residual method to allocate the arrangement consideration. In addition, the guidance also expands the disclosure requirements for revenue recognition. ASU 2009-13 will be effective for the first annual reporting period beginning on or after June 15, 2010, with early adoption permitted provided that the revised guidance is retroactively applied to the beginning of the year of adoption. The Company is currently assessing the future impact of this new accounting update to its consolidated financial statements.

In October 2009, the FASB issued ASU 2009-14, *Software (Topic 985)-Certain Revenue Arrangements that Include Software Elements* (formerly EITF Issue 09-3) and changes the accounting model for revenue arrangements that include both tangible products and software elements. Under this guidance, tangible products containing software components and nonsoftware components that function together to deliver the tangible product's essential functionality are excluded from the software revenue guidance in Subtopic 985-605, *Software-Revenue Recognition*. In addition, hardware components of a tangible product containing software components are always excluded from the software revenue guidance. The guidance in this ASU is effective prospectively for revenue arrangements entered into or materially modified in fiscal years beginning on or after June 15, 2010. Early adoption is permitted. The adoption of this standard is not expected to have an impact on the Company's financial position and results of operations since this accounting standard update provides only implementation and disclosure amendments.

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At December 31, 2009 there was no difference between the carrying values of the Company's cash equivalents and fair market value. For certain financial instruments, including accounts receivable, accounts payable, accrued expenses the carrying amounts approximate fair value due to their relatively short maturities.

On October 1, 2008, the Company adopted guidance issued by the FASB as codified in ASC 820-10, *Fair Value Measurements and Disclosures* (formerly SFAS No. 157). This guidance defines fair value, and establishes a three-level valuation hierarchy for disclosures of fair value measurement that enhances disclosure requirements for fair value measures. Financial instruments measured at fair value on a recurring basis as of December 31, 2009 are classified based on the valuation technique level in the table below:

	Total	Active Markets for Identical Instruments Level 1	Significant Other Observable Inputs Level 2	Significant Unobservable Inputs Level 3
Assets:				
None	\$	\$	\$	\$
Liabilities:				
Warrant liability	\$ 150,901	\$	\$ 150,901	\$

As described in Note 10, the Company has warrants issued in 2006 subject to an anti-dilution reset provision. In accordance with ASC 815-40, the Company reclassified the fair value of the warrant from equity to a liability as of October 1, 2009. The warrant liability is being marked to market each quarter-end until they are completely settled. The Company used Level 2 inputs for its valuation methodology as their fair value was determined by using the Black-Scholes option pricing model based on various assumptions (see Note 10) consistent with the Company's application of ASC 718.

5. INVENTORIES

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