

BROOKS AUTOMATION INC

Form 10-Q

May 10, 2007

Table of Contents

**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: March 31, 2007**
OR

**Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
For the transition period from _____ to _____
Commission File Number 0-25434
BROOKS AUTOMATION, INC.
(Exact name of registrant as specified in its charter)**

Delaware

04-3040660

(State or other jurisdiction of
incorporation or organization)

(I.R.S. Employer
Identification No.)

15 Elizabeth Drive
Chelmsford, Massachusetts
(Address of principal executive offices)

01824
(Zip Code)

Registrant's telephone number, including area code: (978) 262-2400

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No
Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act.

Large Accelerated Filer Accelerated Filer Non-Accelerated Filer

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

APPLICABLE ONLY TO ISSUERS INVOLVED IN BANKRUPTCY PROCEEDINGS DURING THE PRECEDING FIVE YEARS

Indicate by check mark whether the registrant has filed all documents and reports required to be filed by Section 12, 13 or 15(d) of the Securities Exchange Act of 1934 subsequent to the distribution of securities under a plan confirmed by a court. Yes No

Indicate the number of shares outstanding of each of the registrant's classes of common stock, as of the latest practical date, April 30, 2007:

Common stock, \$0.01 par value

75,821,598 shares

BROOKS AUTOMATION, INC.
INDEX

	PAGE NUMBER
PART I. FINANCIAL INFORMATION	
Item 1. Consolidated Financial Statements	
<u>Consolidated Balance Sheets as of March 31, 2007 (unaudited) and September 30, 2006</u>	3
<u>Consolidated Statements of Operations for the three and six months ended March 31, 2007 and 2006 (unaudited)</u>	4
<u>Consolidated Statements of Cash Flows for the six months ended March 31, 2007 and 2006 (unaudited)</u>	5
<u>Notes to Consolidated Financial Statements (unaudited)</u>	6
Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations	18
Item 3. Quantitative and Qualitative Disclosures about Market Risk	26
Item 4. Controls and Procedures	26
PART II. OTHER INFORMATION	
Item 1. Legal Proceedings	26
Item 1A. Risk Factors	29
Item 4. Submission of Matters to a Vote of Security Holders	31
Item 6. Exhibits	31
Signatures	32
<u>EX-31.01 SECTION 302 CERTIFICATION OF CEO</u>	
<u>EX-31.02 SECTION 302 CERTIFICATION OF CFO</u>	
<u>EX-32 SECTION 906 CERTIFICATION OF THE CEO AND CFO</u>	

Table of Contents

BROOKS AUTOMATION, INC.
CONSOLIDATED BALANCE SHEETS
(unaudited)

(In thousands, except share and per share data)

	March 31, 2007	September 30, 2006
Assets		
Current assets		
Cash and cash equivalents	\$ 252,681	\$ 115,773
Marketable securities	60,477	68,280
Accounts receivable, net	137,548	113,440
Inventories, net	104,820	99,854
Current assets from discontinued operations		15,277
Prepaid expenses and other current assets	22,501	20,188
 Total current assets	 578,027	 432,812
Property, plant and equipment, net	79,523	76,667
Long-term marketable securities	7,634	7,307
Goodwill	315,547	314,452
Intangible assets, net	84,590	92,213
Non-current assets from discontinued operations		42,047
Equity investment in Ulvac Cryogenics, Inc.	21,546	21,489
Other assets	5,747	5,590
 Total assets	 \$ 1,092,614	 \$ 992,577
Liabilities, minority interests and stockholders' equity		
Current liabilities		
Current portion of long-term debt	\$ 6	\$ 11
Accounts payable	54,455	69,270
Deferred revenue	7,524	8,261
Accrued warranty and retrofit costs	12,204	11,608
Accrued compensation and benefits	25,519	25,999
Accrued restructuring costs	4,637	7,254
Accrued income taxes payable	19,496	17,773
Current liabilities from discontinued operations		21,223
Accrued expenses and other current liabilities	18,496	18,780
 Total current liabilities	 142,337	 180,179
Long-term debt		2
Accrued long-term restructuring	10,436	9,289
Non-current liabilities from discontinued operations		963
Other long-term liabilities	3,202	2,616
 Total liabilities	 155,975	 193,049

Contingencies (Note 12)		
Minority interests	446	394
Stockholders' equity		
Preferred stock, \$0.01 par value, 1,000,000 shares authorized, no shares issued and outstanding		
Common stock, \$0.01 par value, 125,000,000 shares authorized, 75,786,372 and 75,431,592 shares issued and outstanding at March 31, 2007 and September 30, 2006, respectively	758	754
Additional paid-in capital	1,770,557	1,763,247
Accumulated other comprehensive income	15,251	15,432
Accumulated deficit	(850,373)	(980,299)
Total stockholders' equity	936,193	799,134
Total liabilities, minority interests and stockholders' equity	\$ 1,092,614	\$ 992,577

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

Table of Contents

BROOKS AUTOMATION, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
(unaudited)
(In thousands, except per share data)

	Three months ended March 31,		Six months ended March 31,	
	2007	2006	2007	2006
Revenues				
Product	\$ 160,623	\$ 120,359	\$ 320,948	\$ 205,170
Services	34,303	28,413	65,346	52,097
Total revenues	194,926	148,772	386,294	257,267
Cost of revenues				
Product	109,665	85,779	218,089	155,048
Services	22,771	17,110	46,033	30,873
Total cost of revenues	132,436	102,889	264,122	185,921
Gross profit	62,490	45,883	122,172	71,346
Operating expenses				
Research and development	13,278	10,908	26,368	20,116
Selling, general and administrative	30,562	27,701	61,558	53,328
Restructuring and acquisition-related charges	3,040	1,947	3,040	2,856
Total operating expenses	46,880	40,556	90,966	76,300
Operating income (loss) from continuing operations	15,610	5,327	31,206	(4,954)
Interest income	2,355	3,570	4,530	7,098
Interest expense	314	2,388	455	4,746
Equity in earnings of Ulvac Cryogenics, Inc.	179	250	550	472
Other (income) expense, net	383	(654)	925	(243)
Income (loss) from continuing operations before income taxes and minority interests	17,447	7,413	34,906	(1,887)
Income tax provision	1,480	868	2,124	1,192
Income (loss) from continuing operations before minority interests	15,967	6,545	32,782	(3,079)
Minority interests in income (loss) of consolidated subsidiaries	216	(568)	52	(766)
Income (loss) from continuing operations	15,751	7,113	32,730	(2,313)
Income (loss) from discontinued operations, net of income taxes	8,138	(2,761)	13,298	(5,035)
Gain on sale of discontinued operations, net of income taxes	83,898		83,898	

Edgar Filing: BROOKS AUTOMATION INC - Form 10-Q

Income (loss) from discontinued operations, net of income taxes	92,036	(2,761)	97,196	(5,035)
Net income (loss)	\$ 107,787	\$ 4,352	\$ 129,926	\$ (7,348)
Basic income (loss) per share from continuing operations	\$ 0.21	\$ 0.10	\$ 0.44	\$ (0.03)
Basic income (loss) per share from discontinued operations	1.23	(0.04)	1.30	(0.07)
Basic net income (loss) per share	\$ 1.44	\$ 0.06	\$ 1.74	\$ (0.10)
Diluted income (loss) per share from continuing operations	\$ 0.21	\$ 0.10	\$ 0.44	\$ (0.03)
Diluted income (loss) per share from discontinued operations	1.22	(0.04)	1.29	(0.07)
Diluted net income (loss) per share	\$ 1.43	\$ 0.06	\$ 1.73	\$ (0.10)
Shares used in computing income (loss) per share				
Basic	74,766	74,371	74,680	70,174
Diluted	75,327	74,595	75,173	70,174

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

Table of Contents

BROOKS AUTOMATION, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(unaudited)
(In thousands)

	Six months ended March 31,	
	2007	2006
Cash flows from operating activities		
Net income (loss)	\$ 129,926	\$ (7,348)
Adjustments to reconcile net income (loss) to net cash provided by operating activities:		
Depreciation and amortization	16,242	15,474
Stock-based compensation	4,070	4,112
Discount on marketable securities	(571)	(1,745)
Amortization of debt issuance costs		419
Undistributed earnings of joint venture	(550)	(472)
Minority interests	52	(766)
Loss on disposal of long-lived assets	476	190
Gain on sale of software division, net	(81,813)	
Changes in operating assets and liabilities, net of acquired assets and liabilities:		
Accounts receivable	(21,725)	(17,649)
Inventories	(6,092)	3,511
Prepaid expenses and other current assets	(8,110)	(8,738)
Accounts payable	(14,999)	13,805
Deferred revenue	4,434	5,045
Accrued warranty and retrofit costs	590	(387)
Accrued compensation and benefits	(938)	2,251
Accrued restructuring costs	(1,474)	(5,140)
Accrued expenses and other current liabilities	(1,478)	4,944
Net cash provided by operating activities	18,040	7,506
Cash flows from investing activities		
Purchases of property, plant and equipment	(12,180)	(5,320)
Proceeds from the sale of software division	119,090	
Acquisition of Helix Technology, cash acquired net of expenses		8,886
Acquisition of Synetics Solutions, net of cash acquired	(38)	
Purchases of marketable securities	(128,221)	(545,883)
Sale/maturity of marketable securities	136,055	509,974
Purchases of intangibles	15	
Net cash provided by (used in) investing activities	114,721	(32,343)
Cash flows from financing activities		
Payments of long-term debt and capital lease obligations	(2)	(3)
Proceeds from issuance of common stock, net of issuance costs	3,530	2,274
Net cash provided by financing activities	3,528	2,271

Edgar Filing: BROOKS AUTOMATION INC - Form 10-Q

Effects of exchange rate changes on cash and cash equivalents	619	647
Net increase (decrease) in cash and cash equivalents	136,908	(21,919)
Cash and cash equivalents, beginning of period	115,773	202,462
Cash and cash equivalents, end of period	\$ 252,681	\$ 180,543
Supplemental cash flow information		
Non-cash transactions:		
Acquisition of Helix Technology, net of transaction costs	\$	\$ 447,949

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

Table of Contents

BROOKS AUTOMATION, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (unaudited)

1. Basis of Presentation

The unaudited condensed consolidated financial statements of Brooks Automation, Inc. and its subsidiaries (Brooks or the Company) included herein have been prepared in accordance with generally accepted accounting principles. In the opinion of management, all material adjustments which are of a normal and recurring nature necessary for a fair presentation of the results for the periods presented have been reflected.

Certain information and footnote disclosures normally included in our annual consolidated financial statements have been condensed or omitted and, accordingly, the accompanying financial information should be read in conjunction with the consolidated financial statements and notes thereto contained in the Company s Annual Report on Form 10-K, filed with the United States Securities and Exchange Commission for the year ended September 30, 2006. Certain reclassifications have been made in the prior period consolidated financial statements to conform to the current presentation.

Recently Enacted Accounting Pronouncements

In May 2005, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standards (SFAS) No. 154, Accounting Changes and Error Corrections, a replacement of APB Opinion No. 20, Accounting Changes and FASB Statement No. 3, Reporting Accounting Changes in Interim Financial Statements (SFAS 154). SFAS 154 provides guidance on the accounting for and reporting of accounting changes and error corrections. It establishes, unless impracticable, retrospective application as the required method for reporting a change in accounting principle in the absence of explicit transition requirements specific to the newly adopted accounting principle. SFAS 154 also provides guidance for determining whether retrospective application of a change in accounting principle is impracticable and for reporting a change when retrospective application is impracticable. On October 1, 2006, the Company adopted SFAS 154 and did not realize a material impact on its financial position or results of operations.

In June 2006, the FASB issued FASB Interpretation No. 48, Accounting for Uncertainty in Income Taxes, an Interpretation of FASB Statement No. 109 (FIN No. 48). FIN No. 48 clarifies the accounting for uncertainty in income taxes recognized in an enterprise s financial statements in accordance with FAS No. 109, Accounting for Income Taxes. FIN No. 48 prescribes a two-step process to determine the amount of tax benefit to be recognized. First, the tax position must be evaluated to determine the likelihood that it will be sustained upon external examination. If the tax position is deemed more-likely-than-not to be sustained, the tax position is then assessed to determine the amount of benefit to recognize in the financial statements. The amount of the benefit that may be recognized is the largest amount that has a greater than 50 percent likelihood of being realized upon ultimate settlement. The guidance will become effective as of the beginning of the Company s fiscal year beginning after December 15, 2006. The Company is currently evaluating the potential impact of FIN No. 48 on its financial position and results of operations.

In September 2006, the SEC issued Staff Accounting Bulletin No. 108, Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year Financial Statements (SAB 108) expressing the Staff s views regarding the process of quantifying financial statement misstatements. There have been two widely-recognized methods for quantifying the effects of financial statement errors: the roll-over method and the iron curtain method. The roll-over method focuses primarily on the impact of a misstatement on the income statement, including the reversing effect of prior year misstatements, but its use can lead to the accumulation of misstatements in the balance sheet. The iron-curtain method, on the other hand, focuses primarily on the effect of correcting the period-end balance sheet with less emphasis on the reversing effects of prior year errors on the income statement. SAB 108 establishes an approach that requires quantification of financial statement errors based on the effects of the error on each of the Company s financial statements and the related financial statement disclosures. This model is commonly referred to as a dual approach because it essentially requires quantification of errors under both the iron-curtain and the roll-over methods. The provisions of SAB 108 should be applied to annual financial statements covering the first fiscal year ending after November 15, 2006. The Company is currently evaluating the provisions of SAB 108.

Table of Contents

In September 2006, the FASB issued SFAS No. 157, Fair Value Measurements (SFAS 157). SFAS 157 defines fair value, establishes a framework for measuring fair value in generally accepted accounting principles (GAAP) and expands disclosures about fair value measurements. SFAS 157 applies under other accounting pronouncements that require or permit fair value measurements, the FASB having previously concluded in those accounting pronouncements that fair value is the relevant measurement attribute. Accordingly, SFAS 157 does not require any new fair value measurements. SFAS 157 is effective for fiscal years beginning after November 15, 2007, and interim periods within those fiscal years, with earlier adoption permitted. The provisions of SFAS 157 should be applied prospectively as of the beginning of the fiscal year in which it is initially applied, with limited exceptions. The Company is currently evaluating the provisions of SFAS 157.

In September 2006, the FASB issued SFAS No. 158, Employers Accounting for Defined Benefit Pension and Other Postretirement Plans, an amendment of FASB Statements No. 87, 88, 106, and 132(R) (SFAS 158). SFAS 158 requires an employer that is a business entity and sponsors one or more single-employer defined benefit plans to:

a. Recognize the funded status of a benefit plan, measured as the difference between plan assets at fair value and the benefit obligation, in its statement of financial position. For a pension plan, the benefit obligation is the projected benefit obligation; for any other postretirement benefit plan, such as a retiree health care plan, the benefit obligation is the accumulated postretirement benefit obligation.

b. Recognize as a component of other comprehensive income, net of tax, the gains or losses and prior service costs or credits that arise during the period but are not recognized as components of net periodic benefit cost pursuant to SFAS No. 87, Employers Accounting for Pensions , or SFAS No. 106, Employers Accounting for Postretirement Benefits Other Than Pensions . Amounts recognized in accumulated other comprehensive income, including the gains or losses, prior service costs or credits, and the transition asset or obligation remaining from the initial application of SFAS No. 87 and SFAS No. 106, are adjusted as they are subsequently recognized as components of net periodic benefit cost pursuant to the recognition and amortization provisions of those Statements.

c. Measure defined benefit plan assets and obligations as of the date of the employer s fiscal year-end statement of financial position (with limited exceptions).

d. Disclose in the notes to financial statements additional information about certain effects on net periodic benefit cost for the next fiscal year that arise from delayed recognition of the gains or losses, prior service costs or credits, and transition asset or obligation.

An employer with publicly traded equity securities is required to initially recognize the funded status of a defined benefit postretirement plan and to provide the required disclosures as of the end of the first fiscal year ending after December 15, 2006. Retrospective application is not permitted. The Company is currently evaluating the provisions of SFAS 158.

In February 2007, the FASB issued SFAS No. 159, The Fair Value Option for Financial Assets and Financial Liabilities Including an Amendment of FASB Statement No. 115 (SFAS No. 159). SFAS No. 159 permits entities to choose to measure many financial instruments and certain other items at fair value and is effective as of the beginning of the Company s fiscal year beginning after November 15, 2007. The Company is currently evaluating the potential impact of SFAS No. 159 on its financial position and results of operations.

2. Stock Based Compensation

As of October 1, 2005, the Company adopted the provisions of Statement of Financial Accounting Standards No. 123 (revised 2004), Share-Based Payment (SFAS 123R) using the modified prospective method, which requires measurement of compensation cost for all stock awards at fair value on date of grant and recognition of compensation over the service period for awards expected to vest.

Table of Contents

The following table reflects compensation expense recorded during the three and six months ended March 31, 2007 and 2006 in accordance with SFAS 123R (in thousands):

	Three months ended March 31,		Six months ended March 31,	
	2007	2006	2007	2006
Stock options	\$ 640	\$ 968	\$ 1,441	\$ 2,876
Restricted stock	1,059	477	2,177	861
Employee stock purchase plan	228	193	452	375
	\$ 1,927	\$ 1,638	\$ 4,070	\$ 4,112

Equity Incentive Plans

The Company's equity incentive plans are intended to attract and retain employees and to provide an incentive for them to assist the Company to achieve long-range performance goals and to enable them to participate in the long-term growth of the Company. The equity incentive plans consist of plans under which employees may be granted options to purchase shares of the Company's stock, restricted stock and other equity incentives. Under the equity incentive plans, stock options generally have a vesting period of 4 years and are exercisable for a period not to exceed 7 years from the date of issuance. Restricted stock awards generally vest over one to four years. At March 31, 2007, a total of 6,465,658 shares were reserved and available for the issuance of stock and restricted stock.

Stock Option Activity

The following table summarizes stock option activity for the six months ended March 31, 2007:

	Number of Options	Weighted Average Exercise Price
Outstanding at September 30, 2006	4,790,477	\$ 21.51
Granted		
Exercised	(183,288)	11.61
Forfeited/expired	(684,709)	23.52
Outstanding at March 31, 2007	3,922,480	\$ 21.63
Options exercisable at March 31, 2007	3,471,992	\$ 22.50

The options outstanding and exercisable at March 31, 2007 were in the following exercise price ranges:

Range of Exercise Prices	Shares	Options Outstanding			Options Exercisable		
		Options Remaining Contractual Life (Years)	Weighted- Average Exercise Price	Aggregate Intrinsic Value (in Thousands)	Options Weighted- Average Exercise Price	Aggregate Intrinsic Value (in Thousands)	
\$3.62 \$17.15	1,135,767	4.41	\$ 11.97	\$ 5,883	842,198	\$ 11.60	\$ 4,673
\$17.22 \$24.02	714,928	3.79	\$ 19.31	\$	563,644	\$ 19.62	\$
\$24.30 \$24.30	1,144,798	2.57	\$ 24.30	\$	1,139,163	\$ 24.30	\$
\$24.91 \$59.44	926,987	1.44	\$ 31.94	\$	926,987	\$ 31.94	\$
\$3.62 \$59.44	3,922,480	3.06	\$ 21.63	\$ 5,883	3,471,992	\$ 22.50	\$ 4,673

The weighted average remaining contractual life of options exercisable at March 31, 2007 was 2.7 years.

The aggregate intrinsic value in the table above represents the total intrinsic value, based on the Company's closing stock price of \$17.15 as of March 31, 2007, which would have been received by the option holders had all option holders exercised their options as of that date.

No stock options were granted during the three months ended March 31, 2007 and 2006. The weighted average grant date fair value of options, as determined under SFAS 123R, granted during the six months ended March 31, 2006 was \$6.61 per share. No stock options were granted during the six months ended March 31, 2007. The total intrinsic value of options exercised during the three month period ended March 31, 2007 and 2006 was \$690,000 and \$124,000, respectively. The total intrinsic value of options exercised during the six month period ended March 31, 2007 and 2006 was \$743,000 and \$336,000, respectively. The total cash received from employees as a result of employee stock option exercises during the three months ended March 31, 2007 and 2006 was \$1,762,000 and

Table of Contents

\$436,000, respectively. The total cash received from employees as a result of employee stock option exercises during the six months ended March 31, 2007 and 2006 was \$2,129,000 and \$1,062,000, respectively.

As of March 31, 2007 future compensation cost related to nonvested stock options is approximately \$4.1 million and will be recognized over an estimated weighted average period of 2.1 years.

The Company settles employee stock option exercises with newly issued common shares.

Restricted Stock Activity

Restricted stock for the six months ended March 31, 2007 was determined using the fair value method. A summary of the status of the Company's restricted stock as of March 31, 2007 and changes during the six months ended March 31, 2007 is as follows:

	Six months ended March 31, 2007	
	Shares	Weighted Average Grant-Date Fair Value
Outstanding at beginning of year	895,750	\$ 13.79
Awards granted	125,000	14.31
Awards vested	(84,681)	15.62
Awards canceled	(78,307)	14.61
Outstanding at end of period	857,762	\$ 13.64

The fair value of restricted stock awards vested during the three months ended March 31, 2007 and 2006 was \$0.1 million for each quarter. The fair value of restricted stock awards vested during the six months ended March 31, 2007 and 2006 was \$1.3 million for each period.

As of March 31, 2007, the unrecognized compensation cost related to nonvested restricted stock is \$8.3 million and will be recognized over an estimated weighted average amortization period of 2.4 years.

Employee Stock Purchase Plan

The Company's employee stock purchase plan enables eligible employees to purchase shares of the Company's common stock. Under this plan, eligible employees may purchase shares during six-month offering periods commencing on February 1 and August 1 of each year at a price per share of 85% of the lower of the fair market value price per share on the first or last day of each six-month offering period. Participating employees may elect to have up to 10% of their base pay withheld and applied toward the purchase of such shares. The rights of participating employees under this plan terminate upon voluntary withdrawal from the plan at any time or upon termination of employment. There were 118,073 shares purchased under the employee stock purchase plan during the three and six months ended March 31, 2007. At March 31, 2007, a total of 1,330,165 shares were reserved and available for issuance under this plan, which reflects an increase of 750,000 shares approved by the shareholders in March 2006.

3. Goodwill and Intangible Assets

The changes in the carrying amount of goodwill for the six months ended March 31, 2007 is as follows (in thousands):

	Total
Balance at September 30, 2006	\$ 314,452
Adjustments to goodwill:	
Acquisition of Helix Technology	(833)
Acquisition of Synetics Solutions	1,928
Balance at March 31, 2007	\$ 315,547

Components of the Company's identifiable intangible assets are as follows (in thousands):

9

Table of Contents

	March 31, 2007			September 30, 2006		
	Cost	Accumulated Amortization	Net book value	Cost	Accumulated Amortization	Net book Value
Patents	\$ 9,802	\$ 6,878	\$ 2,924	\$ 9,787	\$ 6,662	\$ 3,125
Completed technology	66,846	19,455	47,391	66,846	14,793	52,053
License agreements	305	305		305	305	
Trademark and trade names	4,962	1,371	3,591	4,962	980	3,982
Non-competition agreements	50	50		50	50	
Customer relationships	36,500	5,816	30,684	36,500	3,447	33,053
	\$ 118,465	\$ 33,875	\$ 84,590	\$ 118,450	\$ 26,237	\$ 92,213

Amortization expense for intangible assets was \$3.8 million and \$3.2 million for the three months ended March 31, 2007 and 2006, respectively, and \$7.6 million and \$5.3 million for the six months ended March 31, 2007 and 2006, respectively.

4. Business Acquisitions***Helix Technology Corporation***

On October 26, 2005, the Company acquired all the issued and outstanding stock of Helix Technology Corporation (Helix). Helix develops and manufactures vacuum technology solutions for the semiconductor, data storage, and flat panel display markets. The Company believes that the acquisition of Helix enables it to better serve its current market, increase its addressable market, reduce the volatility that both businesses have historically faced and positions the Company to enhance its financial performance. The aggregate purchase price, net of cash acquired, was approximately \$458.1 million, consisting of 29.0 million shares of common stock valued at \$444.6 million, the fair value of assumed Helix options of \$3.3 million and transaction costs of \$10.2 million. The market price used to value the Brooks shares issued as consideration for Helix was \$15.32, which represents the average of the closing market price of Brooks common stock for the period beginning two trading days before and ending two trading days after the merger agreement was announced. The actual number of shares of Brooks common stock issued was determined based on the actual number of shares of Helix common stock outstanding immediately prior to the completion of the merger, based on an exchange ratio of 1.11 shares of Brooks common stock for each outstanding share of Helix common stock. This transaction qualified as a tax-free reorganization under Section 368(a) of the Internal Revenue Code of 1986, as amended.

The consolidated financial statements include the results of Helix from the date of acquisition.

The following table summarizes the fair value of the assets acquired and liabilities assumed at the date of acquisition based upon a third-party valuation (in millions):

Current assets	\$ 79.9
Property, plant and equipment	15.4
Intangible assets	84.4
Goodwill	276.0
Other assets	20.8
Total assets acquired	476.5
Current liabilities	17.3
Other liabilities	1.1

Total liabilities assumed	18.4
Total purchase price including acquisition costs	\$ 458.1

Of the \$84.4 million of acquired intangible assets, the following table reflects the allocation of the acquired intangible assets and related estimates of useful lives (in millions):

Completed and core technology	\$56.4	6.9 years weighted average estimated useful life
Customer and contract relationships	23.3	6.9 years weighted average estimated economic consumption life
Trade names and trademarks	4.7	6 years weighted average estimated useful life
	\$84.4	

Table of Contents***Synetics Solutions, Inc.***

On May 8, 2006, the Company entered into an Agreement and Plan of Merger (the Merger Agreement) with Synetics Solutions Inc. (Synetics). Brooks completed its acquisition of Synetics from Yaskawa Electric Corporation (Yaskawa), a corporation duly organized and existing under the laws of Japan, through a merger that became effective as of June 30, 2006. Synetics provides customized manufactured solutions for the North American semiconductor equipment industry. Pursuant to the merger agreement, Synetics became a wholly owned subsidiary of Brooks. The aggregate purchase price of Synetics, net of cash acquired, was approximately \$50.2 million consisting of a \$28.6 million cash payment to Yaskawa, repayment of outstanding debt of \$19.9 million and transaction costs of \$1.7 million. The acquisition of Synetics will provide the Company with the opportunity to enhance its existing capabilities with respect to manufacturing customer designed automation systems.

Also on May 8, 2006, the Company agreed to enter into a Joint Venture Agreement (the Agreement) with Yaskawa to form a 50/50 joint venture called Yaskawa Brooks Automation, Inc. (YBA) to exclusively market and sell Yaskawa's semiconductor robotics products and Brooks' automation hardware products to semiconductor customers in Japan. This Agreement was executed on June 30, 2006.

The consolidated financial statements include the results of Synetics from the date of acquisition and recognize the Company's equity investment in YBA which began operations on September 21, 2006.

The following table summarizes the estimated fair value of the assets acquired and liabilities assumed at the date of acquisition based upon a third-party valuation (in millions):

Current assets	\$ 17.9
Property, plant and equipment	8.6
Intangible assets	17.4
Goodwill	14.5
Other assets	0.1
Total assets acquired	58.5
Current liabilities	8.3
Total purchase price including acquisition costs	\$ 50.2

Of the \$17.4 million of acquired intangible assets, the following table reflects the allocation of the acquired intangible assets and related estimates of useful lives (in millions):

Core technology	\$ 4.2	7 years weighted average estimated useful life
Customer and contract relationships	4.8	7 years weighted average estimated economic consumption life
Customer supply agreement	8.4	10 years weighted average estimated useful life
	\$17.4	

5. Property, Plant and Equipment

Property, plant and equipment as of March 31, 2007 and September 30, 2006 were as follows (in thousands):

	March 31, 2007	September 30, 2006
Buildings and land	\$ 45,329	\$ 45,421
Computer equipment and software	40,310	48,476
Machinery and equipment	42,603	40,475

Edgar Filing: BROOKS AUTOMATION INC - Form 10-Q

Furniture and fixtures	11,564	12,078
Leasehold improvements	23,058	22,873
Construction in progress	12,630	5,380
	175,494	174,703
Less accumulated depreciation and amortization	(95,971)	(98,036)
Property, plant and equipment, net	\$ 79,523	\$ 76,667

Depreciation expense was \$4.2 million and \$3.2 million for the three months ended March 31, 2007 and 2006, respectively, and \$8.5 million and \$7.9 million for the six months ended March 31, 2007 and 2006, respectively.

Table of Contents**6. Earnings (Loss) per Share**

Below is a reconciliation of weighted average common shares outstanding for purposes of calculating basic and diluted earnings (loss) per share (in thousands):

	Three months ended March 31,		Six months ended March 31,	
	2007	2006	2007	2006
Weighted average common shares outstanding used in computing basic earnings (loss) per share	74,766	74,371	74,680	70,174
Dilutive common stock options and restricted stock awards	561	224	493	
Weighted average common shares outstanding for purposes of computing diluted earnings (loss) per share	75,327	74,595	75,173	70,174

Approximately 3,297,000 and 4,753,000 options to purchase common stock and 0 and 1,000 shares of restricted stock were excluded from the computation of diluted earnings (loss) per share attributable to common stockholders for the three months ended March 31, 2007 and 2006, respectively, as their effect would be anti-dilutive. The 3,297,000 and 4,753,000 options for the three months ended March 31, 2007 and 2006, respectively, had an exercise price greater than the average market price of the common stock. In addition, approximately 3,555,000 and 5,263,000 options to purchase common stock and 0 and 66,000 shares of restricted stock were excluded from the computation of diluted earnings (loss) per share attributable to common stockholders for the six months ended March 31, 2007 and 2006, respectively, as their effect would be anti-dilutive. The 3,555,000 options for the six months ended March 31, 2007 had an exercise price greater than the average market price of the common stock. These options and restricted stock could, however, become dilutive in future periods. In addition, 2,492,000 shares of common stock for the assumed conversion of the Company's convertible debt was excluded from this calculation for the three and six months ended March 31, 2006 as the effect of conversion would be anti-dilutive based on a conversion price of \$70.23. The Company paid off the convertible debt in full on July 17, 2006.

7. Discontinued Operations

On March 30, 2007, the Company completed the sale of its software division, Brooks Software, to Applied Materials, Inc., a Delaware corporation (Applied) for \$125 million in cash consideration and the assumption of certain liabilities related to Brooks Software. Brooks Software is a provider of real-time applications for greater efficiency and productivity in collaborative, complex manufacturing environments. The Company transferred to Applied substantially all of its assets primarily related to Brooks Software, including the stock of several subsidiaries engaged only in the business of Brooks Software, and Applied assumed certain liabilities related to Brooks Software.

The Company recorded a gain of \$83.9 million in the three months ended March 31, 2007 on the sale of its discontinued software business. This gain reflects the receipt of \$119.1 million of cash consideration plus an additional \$11.6 million to be received within the next twelve months upon the completion of certain indemnification and tax withholding obligations and the finalization of the net asset valuation, offset by expenses of \$7.4 million, a tax provision of \$1.8 million, and the write-off of net assets totaling \$37.6 million.

The sale was consummated pursuant to the terms of an Asset Purchase Agreement dated as of November 3, 2006 by and between the Company and Applied. Applied is among the Company's largest customers for tool automation products. Following a bidding process in which multiple possible purchasers participated, the purchase price for Brooks Software was determined by arm's-length negotiations between the Company and Applied. The Company sold its software division in order to focus on its core semiconductor-related hardware businesses.

Effective October 1, 2006, the Company's consolidated financial statements and notes have been reclassified to reflect this business as a discontinued operation in accordance with SFAS No. 144, Accounting for the Impairment or Disposal of Long-Lived Assets.

The summary of operating results from discontinued operations of the software division for the three and six months ended March 31, 2007 and 2006 is as follows (in thousands):

12

Table of Contents

	Three months ended		Six months ended	
	March 31,		March 31,	
	2007	2006	2007	2006
Revenues	\$ 26,178	\$ 20,405	\$ 47,712	\$ 39,085
Gross profit	19,426	13,857	34,048	25,328
Income (loss) from discontinued operations before income taxes	8,932	(2,632)	12,673	(3,935)
Income (loss) from discontinued operations	8,138	(2,759)	13,298	(5,085)

The income of \$13,298,000 for the six months ended March 31, 2007 includes the recognition of a tax benefit resulting from the reversal of tax reserves due to an audit settlement of \$2,100,000.

In addition, the Company recognized discontinued operations from the sale of its Specialty Equipment and Life Sciences division (SELS). For the three months ended March 31, 2006, there was \$3,000 of SELS activity for revenue and \$2,000 of gross loss and loss from discontinued operations, net of tax. For the six months ended March 31, 2006, there was \$55,000 of SELS activity for revenue and \$50,000 of gross profit and income from discontinued operations, net of tax. There was no SELS activity for the three and six months ended March 31, 2007. Due to the losses incurred since acquisition of the SELS division, no tax benefit is reflected for the losses incurred.

Assets and liabilities from discontinued operations are as follows (in thousands):

	September 30, 2006
Current assets from discontinued operations	\$ 15,277
Non-current assets from discontinued operations	\$ 42,047
Current liabilities from discontinued operations	\$ 21,223
Non-current liabilities from discontinued operations	\$ 963

Current assets include accounts receivable and other current assets. Current liabilities include accounts payable, deferred revenue, accrued vacation and other current liabilities. There were no SELS assets and liabilities from discontinued operations as of September 30, 2006.

8. Comprehensive Income (Loss)

Comprehensive income (loss) for the Company is computed as the sum of the Company's net income (loss), the change in the cumulative translation adjustment and the total unrealized gain (loss) on the Company's marketable securities. The calculation of the Company's comprehensive income (loss) for the three and six months ended March 31, 2007 and 2006 is as follows (in thousands):

	Three months ended		Six months ended	
	March 31,		March 31,	
	2007	2006	2007	2006
Net income (loss)	\$ 107,787	\$ 4,352	\$ 129,926	\$ (7,348)
Change in cumulative translation adjustment	379	1,358	1,724	935
Cumulative translation adjustment on sale of software division	(2,085)	-	(2,085)	-
Unrealized gain (loss) on marketable securities	45	105	180	428
	\$ 106,126	\$ 5,815	\$ 129,745	\$ (5,985)

9. Restructuring-Related Charges and Accruals

The Company recorded a charge to continuing operations of \$3,040,000 in the three and six months ended March 31, 2007. This charge primarily relates to a vacant leased facility in Billerica, Massachusetts, the former PRI

Automation, Inc. headquarters, and fully recognizes the Company's remaining obligation on this lease and assumes that the Company will be unable to sublease any portion of the facility over the remainder of the lease. The Company recorded charges to continuing operations of \$1,947,000 in the three months ended March 31, 2006 which consisted of approximately a \$1,600,000 charge related to the vacant Billerica facility and approximately \$300,000 for costs incurred related to workforce reductions. The Company recorded charges to continuing operations of \$2,856,000 in the six months ended March 31, 2006 which consisted of approximately a \$1,600,000 charge related to the vacant Billerica facility and approximately \$1,200,000 for costs incurred related to workforce reductions.

Table of Contents

The activity for the three and six months ended March 31, 2007 and 2006 related to the Company's restructuring-related accruals is summarized below (in thousands):

	Activity Three Months Ended March 31, 2007			Balance March 31, 2007
	Balance December 31, 2006	Expense	Utilization	
Facilities	\$ 12,486	\$ 2,990	\$ (998)	\$ 14,478
Workforce-related	1,865	8	(1,278)	595
	\$ 14,351	\$ 2,998	\$ (2,276)	\$ 15,073

	Activity Three Months Ended March 31, 2006					Balance March 31, 2006
	Balance December 31, 2005	Expense	Helix Acquisition	Reversals	Utilization	
Facilities	\$ 13,960	\$ 1,600	\$ 580	\$	\$ (915)	\$ 15,225
Workforce-related	8,522	1,143	282		(4,188)	5,759
	\$ 22,482	\$ 2,743	\$ 862	\$	\$ (5,103)	\$ 20,984

	Activity Six Months Ended March 31, 2007			Balance March 31, 2007
	Balance September 30, 2006	Expense	Utilization	
Facilities	\$ 13,697	\$ 2,990	\$ (2,209)	\$ 14,478
Workforce-related	2,846	28	(2,279)	595
	\$ 16,543	\$ 3,018	\$ (4,488)	\$ 15,073

	Activity Six Months Ended March 31, 2006					Balance March 31, 2006
	Balance September 30, 2005	Expense	Helix Acquisition	Reversals	Utilization	
Facilities	\$ 15,045	\$ 1,600	\$ 580	\$	\$ (2,000)	\$ 15,225
Workforce-related	8,429	2,851	2,066	(486)	(7,101)	5,759
	\$ 23,474	\$ 4,451	\$ 2,646	\$ (486)	\$ (9,101)	\$ 20,984

Workforce related charges (reversals) include (\$42,000) and \$796,000 for the three months ended March 31, 2007 and 2006, respectively, and (\$22,000) and \$1,109,000 for the six months ended March 31, 2007 and 2006, respectively, related to discontinued operations.

The Company expects the majority of the remaining severance costs totaling \$595,000 will be paid over the next twelve months. The expected facilities costs, totaling \$14,478,000, net of estimated sub-rental income, will be paid on leases that expire through September 2011.

10. Employee Benefit Plans

The components of the Company's net pension cost relating to a noncontributory defined benefit pension plan acquired with the Helix acquisition for the three and six months ended March 31, 2007 and 2006 is as follows (in thousands):

	Three months ended		Six months ended	
	March 31,		March 31,	
	2007	2006	2007	2006
Service cost	\$ 63	\$ 416	\$ 126	\$ 805
Interest cost	175	123	349	380
Expected return on assets	(251)	(253)	(501)	(436)
Net periodic pension benefit cost	\$ (13)	\$ 286	\$ (26)	\$ 749

In conjunction with the acquisition of Helix, the Company closed the defined benefit pension plan to new hires and approved the decision to freeze the plan such that no further benefits would accrue after October 31, 2006. The impact of this decision has been reflected in the purchase price allocation described in Note 4.

Table of Contents

The Company does not expect to make contributions to the pension plan in fiscal 2007 given that the plan has been frozen.

11. Other Balance Sheet Information

Components of other selected captions in the Consolidated Balance Sheets are as follows (in thousands):

	March 31, 2007	September 30, 2006
Accounts receivable	\$ 139,096	\$ 115,149
Less allowances	1,548	1,709
	\$ 137,548	\$ 113,440
Inventories		
Raw materials and purchased parts	\$ 45,159	\$ 48,996
Work-in-process	33,972	25,064
Finished goods	25,689	25,794
	\$ 104,820	\$ 99,854

The Company provides for the estimated cost of product warranties, primarily from historical information, at the time product revenue is recognized and retrofit accruals at the time retrofit programs are established. While the Company engages in extensive product quality programs and processes, including actively monitoring and evaluating the quality of its component suppliers, the Company's warranty obligation is affected by product failure rates, utilization levels, material usage, service delivery costs incurred in correcting a product failure, and supplier warranties on parts delivered to the Company. Product warranty and retrofit activity on a gross basis for three and six months ended March 31, 2007 and 2006 is as follows (in thousands):

	Activity Three Months Ended March 31, 2007		Balance
Balance December 31, 2006			March 31, 2007
\$ 11,895	Accruals \$ 3,681	Settlements \$ (3,372)	\$ 12,204
	Activity Three Months Ended March 31, 2006		Balance
Balance December 31, 2005			March 31, 2006
\$ 9,991	Accruals \$ 3,741	Settlements \$ (2,991)	\$ 10,741
	Activity Six Months Ended March 31, 2007		Balance
Balance September 30, 2006			March 31, 2007
\$ 11,608	Accruals \$ 6,961	Settlements \$ (6,365)	\$ 12,204

Edgar Filing: BROOKS AUTOMATION INC - Form 10-Q

Activity Six Months Ended March 31, 2006

Balance			Balance
September			March 31,
30,			2006
2005	Accruals	Settlements	
\$ 9,782	\$ 5,798	\$ (4,839)	\$ 10,741

The accrual of \$5,798,000 for the six months ended March 31, 2006 includes the acquired warranty liability of \$1,262,000 from Helix at date of acquisition.

12. Contingencies

There has been substantial litigation regarding patent and other intellectual property rights in the semiconductor and related industries. The Company has in the past been, and may in the future be, notified that it may be infringing intellectual property rights possessed by other third parties. The Company cannot guarantee that infringement claims by third parties or other claims for indemnification by customers or end users of its products resulting from infringement claims will not be asserted in the future or that such assertions, if proven to be true, will not materially

Table of Contents

and adversely affect the Company's business, financial condition and results of operations. If any such claims are asserted against the Company's intellectual property rights, the Company may seek to enter into a royalty or licensing arrangement. The Company cannot guarantee, however, that a license will be available on reasonable terms or at all. The Company could decide in the alternative to resort to litigation to challenge such claims or to attempt to design around the patented technology. Litigation or an attempted design around could be costly and would divert the Company's management's attention and resources. In addition, if the Company does not prevail in such litigation or succeed in an attempted design around, the Company could be forced to pay significant damages or amounts in settlement. Even if a design around is effective, the functional value of the product in question could be greatly diminished.

Commercial Litigation Matters

In January 2006 a ruling was issued against the Company by a Massachusetts state court in a commercial litigation matter involving the Company and BlueShift Technologies, Inc. Awards of damages and costs were assessed against Brooks in January and April 2006 in the amount of approximately \$1.6 million, which had been accrued for at December 31, 2005. Brooks has filed a notice of appeal in the case with the Massachusetts Appeals Court and that appeal was argued on April 4, 2007. The matter is now under consideration by the Court.

Proceedings Relating to Equity Incentive Practices and the Restatement

On May 12, 2006, the Company announced that it had received notice that the Boston Office of the United States Securities and Exchange Commission (the SEC) was conducting an informal inquiry concerning stock option grant practices to determine whether violations of the securities laws had occurred. On June 2, 2006, the SEC issued a voluntary request for information in connection with an informal inquiry by that office regarding a loan the Company previously reported had been made to former Chairman and CEO Robert Therrien in connection with the exercise by him of stock options in 1999. On June 23, 2006, the Company was informed that the SEC had opened a formal investigation into this matter and on the general topic of the timing of stock option grants. On June 28, 2006, the SEC issued subpoenas to the Company and to the Special Committee of the Board of Directors, which had previously been formed on March 8, 2006, requesting documents related to the Company's stock option grant practices and to the loan to Mr. Therrien.

On May 19, 2006, the Company received a grand jury subpoena from the United States Attorney (the DOJ) for the Eastern District of New York requesting documents relating to stock option grants. Responsibility for the DOJ's investigation was subsequently assumed by the United States Attorney for the District of Massachusetts. On June 22, 2006 the United States Attorney's Office for the District of Massachusetts issued a grand jury subpoena to the Company in connection with an investigation by that office into the timing of stock option grants by the Company and the loan to Mr. Therrien mentioned above.

The Company is cooperating fully with the investigations being conducted by the SEC and the DOJ.

Private Litigation

On May 22, 2006, a derivative action was filed nominally on the Company's behalf in the Superior Court for Middlesex County, Massachusetts, captioned as *Mollie Gedell, Derivatively on Behalf of Nominal Defendant Brooks Automation, Inc. v. A. Clinton Allen, et al.* The Defendants named in the complaint are: A. Clinton Allen, Director of the Company; Roger D. Emerick, former Director of the Company; Edward C. Grady, Director, President and CEO of the Company; Amin J. Khoury, former Director of the Company; Joseph R. Martin, Director of the Company; John K. McGillicuddy, Director of the Company; and Robert J. Therrien, former Director, President and CEO of the Company.

On May 26, 2006, a derivative action was filed in the Superior Court for Middlesex County, Massachusetts nominally on the Company's behalf, captioned as *Ralph Gorgone, Derivatively on Behalf of Nominal Defendant Brooks Automation, Inc. v. Edward C. Grady, et al.* The Defendants named in the complaint are: Mr. Grady; Mr. Allen; Mr. Emerick; Mr. Khoury; Robert J. Lepofsky, Director of the Company; Mr. Martin; Mr. McGillicuddy; Krishna G. Palepu, Director of the Company; Alfred Woollacott, III, Director of the Company; Mark S. Wrighton, Director of the Company; and Marvin Schorr, Director Emeritus of the Company.

Table of Contents

On August 4, 2006 the Superior Court for Middlesex County, Massachusetts, entered an order consolidating the above state derivative actions under docket number 06-1808 and the caption *In re Brooks Automation, Inc. Derivative Litigation*. On September 5, 2006, the Plaintiffs filed a Consolidated Shareholder Derivative Complaint; the Defendants named therein are: Mr. Allen, Mr. Martin, Mr. Grady, Mr. McGillicuddy, Mr. Therrien, Mr. Emerick, and Mr. Khoury; Robert W. Woodbury, Jr., the Company's Chief Financial Officer; Joseph Bellini, former President and Chief Operating Officer of the Company's Enterprise Software Group; Thomas S. Grilk, Secretary and General Counsel of the Company; current employee Michael W. Pippins; Stanley D. Piekos and Ellen B. Richstone, the Company's former Chief Financial Officers; and David R. Beaulieu, Jeffrey A. Cassis, Santo DiNaro, Peter Frasso, Robert A. McEachern, Dr. Charles M. McKenna, James A. Pelusi, Michael F. Werner, former Officers and employees of the Company. The Consolidated Shareholder Derivative Complaint alleges that certain current and former directors and officers breached fiduciary duties owed to Brooks by backdating stock option grants, issuing inaccurate financial results and false or misleading public filings, and that Messrs. Therrien, Emerick and Khoury breached their fiduciary duties, and Mr. Therrien was unjustly enriched, as a result of the loan to and stock option exercise by Mr. Therrien mentioned above, and seeks, on our behalf, damages for breaches of fiduciary duty and unjust enrichment, disgorgement to the Company of all profits from allegedly backdated stock option grants, equitable relief, and Plaintiffs' costs and disbursements, including attorneys' fees, accountants' and experts' fees, costs, and expenses. The Defendants served motions to dismiss and, in response, Plaintiffs have moved for leave to amend their Complaint. The Proposed Amended Complaint makes allegations substantially similar to those in the Consolidated Shareholder Derivative Complaint, and adds as Defendants Richard C. Small, Senior Vice President and Corporate Controller of the Company, and Mr. Woolcott, Mr. Wrighton, Mr. Lepofsky, and Mr. Palepu, Directors of the Company. If the Court grants Plaintiffs leave to file an amended complaint, Defendants, including the Company, anticipate filing motions to dismiss directed at the amended complaint.

On May 30, 2006, a derivative action was filed in the United States District Court for the District of Massachusetts, captioned as *Mark Collins, Derivatively on Behalf of Nominal Defendant Brooks Automation, Inc. v. Robert J. Therrien, et al.* The defendants in the action are: Mr. Therrien; Mr. Allen; Mr. Emerick; Mr. Grady; Mr. Khoury; Mr. Martin; and Mr. McGillicuddy.

On June 7, 2006, a derivative action was filed in the United States District Court for the District of Massachusetts, captioned as *City of Pontiac General Employees' Retirement System, Derivatively on Behalf of Brooks Automation, Inc. v. Robert J. Therrien, et al.* The Defendants in this action are: Mr. Therrien; Mr. Emerick; Mr. Khoury; Mr. Allen; Mr. Grady; Mr. Lepofsky; Mr. Martin; Mr. McGillicuddy; Mr. Palepu; Mr. Woolcott, III; Mr. Wrighton; and Mr. Schorr.

The District Court issued an Order consolidating the above federal derivative actions on August 15, 2006, and a Consolidated Verified Shareholder Derivative Complaint was filed on October 6, 2006; the Defendants named therein are: Mr. Allen, Mr. Grady, Mr. Lepofsky, Mr. Martin, Mr. McGillicuddy, Mr. Palepu, Mr. Schorr, Mr. Woolcott, Mr. Wrighton, Mr. Woodbury, Mr. Therrien, Mr. Emerick, Mr. Khoury, and Mr. Werner. The Consolidated Verified Shareholder Derivative Complaint alleges violations of Section 10(b) and Rule 10b-5 of the Exchange Act; Section 14(a) of the Exchange Act; Section 20(a) of the Exchange Act; breach of fiduciary duty; corporate waste; and unjust enrichment, and seeks, on behalf of Brooks, damages, extraordinary equitable relief including disgorgement and a constructive trust for improvidently granted stock options or proceeds from alleged insider trading by certain defendants, Plaintiffs' costs and disbursements including attorneys' fees, accountants' and experts' fees, costs and expenses. On December 27, 2006, the Court granted Defendants' motion to stay the federal derivative actions in favor of the first-filed state derivative action described above.

On June 19, 2006, a putative class action was filed in the United States District Court, District of Massachusetts, captioned as *Charles E. G. Leech Sr. v. Brooks Automation, Inc., et al.* The defendants in this action are: the Company; Mr. Therrien; Ellen Richstone, the Company's former Chief Financial Officer; Mr. Emerick; Mr. Khoury; Robert W. Woodbury, Jr., the Company's Chief Financial Officer; and Mr. Grady. The complaint alleges violations of Section 10(b) of the Exchange Act and Rule 10b-5 against the Company and the individual defendants; Section 20(a) of the Exchange Act against the individual defendants; Section 11 of the Securities Act against the Company and Messrs. Grady, Woodbury, Emerick, Khoury and Therrien; Section 12 of the Securities Act against the Company and

Messrs. Grady, Woodbury, Emerick, Khoury and Therrien; and Section 15 of the Securities Act against Messrs. Grady, Woodbury, Emerick, Khoury and Therrien. The complaint seeks, *inter alia*, damages, including interest, and plaintiff's costs.

Table of Contents

On July 19, 2006, a putative class action was filed in the United States District Court for the District of Massachusetts, captioned as *James R. Shaw v. Brooks Automation, Inc. et al.*, No. 06-11239-RWZ. The Defendants in the case are the Company, Mr. Therrien, Ms. Richstone, Mr. Emerick, Mr. Khoury, Mr. Woodbury, and Mr. Grady. The complaint alleges violations of Section 10(b) of the Exchange Act and Rule 10b-5 against all defendants and violations of Section 20(a) of the Exchange Act against all individual defendants. The complaint seeks, *inter alia*, damages, including interest, and plaintiff's costs. On December 13, 2006, the Court issued an order consolidating the *Shaw* action with the *Leech* action described above and appointing a lead plaintiff and lead counsel. The lead plaintiff has filed a Consolidated Amended Complaint. Motions to dismiss have been filed by all defendants in the case and briefing is now in process.

On August 22, 2006, an action captioned as *Mark Levy v. Robert J. Therrien and Brooks Automation, Inc.*, was filed in the United States District Court for the District of Delaware, seeking recovery, on behalf of the Company, from Mr. Therrien under Section 16(b) of the Securities Exchange Act of 1934 for alleged short-swing profits earned by Mr. Therrien due to the loan and stock option exercise in November 1999 referenced above, and a sale by Mr. Therrien of Brooks stock in March 2000. The Complaint seeks disgorgement of all profits earned by Mr. Therrien on the transactions, attorneys' fees and other expenses. On February 20, 2007, a second Section 16(b) action, concerning the same loan and stock option exercise in November 1999 discussed above and seeking the same remedy, was filed in the United States District Court of the District of Delaware, captioned *Aron Rosenberg v. Robert J. Therrien and Brooks Automation, Inc.* On April 4, 2007, the Court issued an order consolidating the *Levy* and *Rosenberg* actions. Defendants have filed motions to dismiss.

The Company is aware of additional proposed class actions, posted on the websites of various law firms. The Company is not yet aware of the filing of any such actions and ha