PROVECTUS PHARMACEUTICALS INC
Form S-1/A
May 01, 2009
As Filed with the Securities and Exchange Commission on April 20, 2009 Registration No. 333-147783

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM S-1/A
Post-Effective Amendment No. 1

REGISTRATION STATEMENT UNDER THE
SECURITIES ACT OF 1933

PROVECTUS PHARMACEUTICALS, INC.
(Exact name of registrant as specified in its charter)

Nevada	2834	90-0031917
State or other jurisdiction of incorporation or organization	(Primary Standard Industrial Classification Code Number)	(IRS Employer Identification No.)

7327 Oak Ridge Highway, Suite A, Knoxville, Tennessee 37931 (866) 594-5999
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Timothy C. Scott, Ph.D., President
Provectus Pharmaceuticals, Inc.
7327 Oak Ridge Highway, Suite A
Knoxville, Tennessee 37931
(866) 594-5999

with a copy to:

Linda Crouch-McCreadie, Esq.
Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.
100 Med Tech Parkway
Suite 200
Johnson City, Tennessee 37604
(423) 928-0181
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Approximate date of commencement of proposed sale to the public: From time to time after the effective date of the registration statement until such time that all of the shares of common stock registered hereunder have been sold.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box. x

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

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

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

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 x
(Do not check if a smaller reporting company)

EXPLANATORY NOTE

The Registrant hereby files this post-effective amendment to its Registration Statement on Form SB-2 (No. 333-147783) as initially filed with the Securities and Exchange Commission on December 3, 2007, as subsequently amended prior to effectiveness on January 7, 2008 and January 28, 2008.

The Registrant previously paid a registration fee of $1,467 in connection with the filing of the initial registration statement on Form SB-2.

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

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

SUBJECT TO COMPLETION, DATED _____, 2009

22,436,231 Shares of Common Stock

This prospectus relates to the sale by the selling stockholders of 22,436,231 shares of our common stock, par value $0.001. 7,881,206 shares registered are held by certain selling stockholders, and 14,555,025 of the shares registered are issuable upon conversion of common-stock warrants held by certain selling stockholders.

The selling stockholders may sell the shares from time to time at the prevailing market price or in negotiated transactions. We will not receive any of the proceeds from the sale of the shares by the selling stockholders. We have agreed to pay the expenses in connection with the registration of these shares. The selling stockholders may be deemed to be “underwriters” within the meaning of the Securities Act of 1933, which we refer to as the “Securities Act.”

Our common stock is quoted on the OTC Bulletin Board under the trading symbol “PVCT.” The closing price per share of our common stock as reported by the OTC Bulletin Board on April 17, 2009 was $1.26.

As you review this prospectus, you should carefully consider the matters described in “Risk Factors,” beginning on page 3.

Neither the Securities and Exchange Commission, which we refer to as the “SEC,” nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

The date of this prospectus is _____, 2009.

You should rely only on the information contained in this document or a document to which we have referred you. We have not authorized anyone to provide you with information that is different.

This document may only be used where it is legal to sell these securities. The information in this document may only be accurate on the date of this document.

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PROSPECTUS SUMMARY

This summary is qualified in its entirety by the more detailed information appearing elsewhere in this prospectus and in the information incorporated by reference into this prospectus.

You should read the following summary together with the more detailed information and consolidated financial statements and related notes thereto appearing elsewhere in this prospectus and incorporated by reference into this prospectus before you invest in our common stock. This prospectus and the information incorporated by reference into this prospectus contain forward-looking statements. The outcome of the events described in these forward-looking statements is subject to risks, and actual results could differ materially. Read this entire prospectus carefully and the information incorporated by reference into this prospectus carefully, especially the risks described under "Risk Factors." Unless otherwise indicated, "we," "us," "our" and similar terms, as well as references to the "Company" and "Provectus," re to Provectus Pharmaceuticals, Inc. and its subsidiaries and not to the selling stockholders.

This prospectus and the registration statement in which it is included relate to the offer and sale of up to an aggregate of 22,436,231 shares of our common stock, $0.001 par value by the selling stockholders identified beginning on page 11. The 22,436,231 shares of our common stock offered by the selling stockholders include 14,555,025 shares issuable upon conversion of common-stock warrants held by the selling stockholders. As used in this prospectus, "selling stockholders" includes donees, pledgees, transferees or other successors-in-interest selling shares received after the date of this prospectus from a selling stockholder as a gift, pledge, partnership distribution or other non-sale related transfer. Our common stock is traded on the OTC Bulletin Board under the symbol "PVCT."

We will not receive any of the proceeds from any sale of the shares by selling stockholders. We will receive up to $13,767,440 in proceeds from any cash exercise of the warrants currently outstanding and for which the underlying shares are included in this prospectus. We intend to use any such cash proceeds received for general corporate purposes.

Our Company

Our company, Provectus Pharmaceuticals, Inc., a Nevada corporation, and our seven wholly owned subsidiaries, Xantech Pharmaceuticals, Pure-ific Corporation, Provectus Biotech, Inc., Provectus Devicetech, Inc., Provectus Imaging, Inc., IP Tech, Inc., and Provectus Pharmatech, Inc., develop, license and market and plan to sell products in three sectors of the healthcare industry:

- Over-the-counter products, which we refer to as "OTC products;"
- Prescription drugs; and
- Medical device systems.

Provectus and the subsidiaries are managed on an integrated basis, and when we refer to "we" or "us" or "the Company" in this prospectus, we refer to all eight corporations considered as a single unit.

Through discovery and use of state-of-the-art scientific and medical technologies, the founders of our pharmaceutical business have developed a portfolio of patented, patentable, and proprietary technologies that support multiple products in the prescription drugs, medical device systems and OTC products categories, including patented technologies for:

- treatment of cancer and serious skin diseases;
- novel therapeutic medical devices;
- enhancing contrast in medical imaging;
- improving signal processing during biomedical imaging; and

- enhancing production of biotechnology products.

Our prescription drug products encompass the areas of dermatology and oncology and involve several types of small molecule-based drugs. Our medical device systems include therapeutic and cosmetic lasers, while our OTC products address markets primarily involving skincare applications. Because our prescription drug candidates and medical device systems are in the early stages of development, they are not yet on the market, and we cannot assure that they will advance to the point of commercialization.

The Offering

Securities Offered	22,436,231 shares of common stock, $0.001 par value. This includes 7,881,206 shares of common stock held by the selling stockholders and up to 14,555,025 shares of common stock issuable upon the exercise of warrants held by the selling stockholders. See "Selling Stockholders," beginning on page 11.
Common Stock Outstanding before the Offering	We are authorized to issue 100,000,000 shares of common stock, of which 53,384,188 shares were issued and outstanding as of March 17, 2009. This amount excludes warrants to purchase 21,025,172 shares of common stock and 8,848,427 shares of common stock issuable upon exercise of options as of December 31, 2008.
Selling stockholders	The selling stockholders are identified in this prospectus, beginning on page 11, together with the maximum amount of our common shares that each may sell either outright or upon conversion rights under their warrants, if any. See “Selling Stockholders,” beginning on page 11.
Offering Price	The offering price will be determined at the time of sale by each selling stockholder.
Use of Proceeds	We will not receive any of the proceeds from any sale of the shares by selling stockholders. We will receive up to $13,767,440 in proceeds from cash exercises of the warrants currently outstanding and for which the underlying shares are included in this prospectus. We intend to use any such cash proceeds received for general corporate purposes. See “Use of Proceeds” on page 9.
Plan of Distribution	Up to 22,436,231 shares of common stock may be offered and sold by the selling stockholders through agents or brokers based upon quotations on the OTC Bulletin Board, through agents or brokers in private sales, or by any other legally available means. See “Plan of Distribution” on page 16.
Dividend Policy	We currently intend to retain any future earnings to fund the development and growth of our business. Therefore, we do not currently anticipate paying cash dividends on our common stock.
OTC Bulletin Board Symbol	PVCT

Risk Factors

Our company faces significant risks, including that our ongoing operations continue to be dependent upon our ability to raise capital. We have only four employees and our future success depends significantly on these employees. Please see the section of this prospectus entitled “Risk Factors,” beginning on page 3 for more information about the risks faced by us.

How to Contact Us

The mailing address of our principal executive office is 7327 Oak Ridge Highway, Suite A, Knoxville, Tennessee 37931, and our telephone number is (866) 594-5999.

RISK FACTORS

Our business is subject to various risks, including those described below. You should carefully consider these risk factors, together with all of the other information included in this prospectus and the information incorporated by reference into this prospectus. Any of these risks could materially adversely affect our business, operating results, and financial condition.

Our technologies are in early stages of development.

We generated minimal initial revenues from sales and operations in 2006 and 2005, and we do not expect to generate revenues to enable us to be profitable for several calendar quarters unless we sell and/or license our technologies. We discontinued our proof-of-concept program in November 2006 and have, therefore, ceased selling our OTC products. To complete our current phases in clinical development, we expect to spend approximately $900,000 in 2009. We estimate that our existing capital resources will be sufficient to fund our current operations. We may need to raise approximately $5 to $10 million additional funds beyond 2009 in order to fully implement our integrated business plan, including execution of the next phases in clinical development of our pharmaceutical products.

Ultimately, we must achieve profitable operations if we are to be a viable entity, unless we are acquired by another company. We intend to proceed as rapidly as possible with the asset sale and licensure of OTC products that can be sold with a minimum of regulatory compliance and with the development of revenue sources through licensing of our existing intellectual property portfolio. We cannot assure you that we will be able to raise sufficient capital to sustain operations beyond 2009 before we can commence revenue generation or that we will be able to achieve or maintain a level of profitability sufficient to meet our operating expenses.

We will need additional capital to conduct our operations and develop our products beyond 2009, and our ability to obtain the necessary funding is uncertain.

We estimate that our existing capital resources will be sufficient to fund our current and planned operations through 2009; however, we may need additional capital. We have based this estimate on assumptions that may prove to be wrong, and we cannot assure that estimates and assumptions will remain unchanged. For example, we are currently assuming that we will continue to operate without any significant staff or other resources expansion. We intend to acquire additional funding through public or private equity financings or other financing sources that may be available. Additional financing may not be available on acceptable terms, or at all. As discussed in more detail below, additional equity financing could result in significant dilution to stockholders. Further, in the event that additional funds are obtained through licensing or other arrangements, these arrangements may require us to relinquish rights to some of our technologies, product candidates or products that we would otherwise seek to develop and commercialize ourselves. If sufficient capital is not available, we may be required to delay, reduce the scope of, or eliminate one or more of our programs, any of which could have a material adverse effect on our business and may impair the value of our patents and other intangible assets.

Existing stockholders may face dilution from our financing efforts.

We must raise additional capital from external sources to execute our business plan beyond 2009. We plan to issue debt securities, capital stock, or a combination of these securities, if necessary. We may not be able to sell these securities, particularly under current market conditions. Even if we are successful in finding buyers for our securities, the buyers could demand high interest rates or require us to agree to onerous operating covenants, which could in turn harm our ability to operate our business by reducing our cash flow and restricting our operating activities. If we were to sell our capital stock, we might be forced to sell shares at a depressed market price, which could result in substantial dilution to our existing shareholders. In addition, any shares of capital stock we may issue may have rights, privileges, and preferences superior to those of our common shareholders.

The prescription drug and medical device products in our internal pipeline are at an early stage of development, and they may fail in subsequent development or commercialization.

We are continuing to pursue clinical development of our most advanced pharmaceutical drug products, PH-10 and PV-10, for use as treatments for specific conditions. These products and other pharmaceutical drug and medical device products that we are currently developing will require significant additional research, formulation and manufacture development, and pre-clinical and extensive clinical testing prior to regulatory licensure and commercialization. Pre-clinical and clinical studies of our pharmaceutical drug and medical device products under development may not demonstrate the safety and efficacy necessary to obtain regulatory approvals. Pharmaceutical and biotechnology companies have suffered significant setbacks in advanced clinical trials, even after experiencing promising results in earlier trials. Pharmaceutical drug and medical device products that appear to be promising at early stages of development may not reach the market or be marketed successfully for a number of reasons, including the following:

- a product may be found to be ineffective or have harmful side effects during subsequent pre-clinical testing or clinical trials,
- a product may fail to receive necessary regulatory clearance,
- a product may be too difficult to manufacture on a large scale,
- a product may be too expensive to manufacture or market,
- a product may not achieve broad market acceptance,
- others may hold proprietary rights that will prevent a product from being marketed, or
- others may market equivalent or superior products.

We do not expect any pharmaceutical drug products that we are developing to be commercially available for several years, if at all. Our research and product development efforts may not be successfully completed and may not result in any successfully commercialized products. Further, after commercial introduction of a new product, discovery of problems through adverse event reporting could result in restrictions on the product, including withdrawal from the market and, in certain cases, civil or criminal penalties.

Our OTC products are at an early stage of introduction, and we cannot be sure that they will be sold through a combination of asset sale and licensure in the marketplace.

We have previously focused on marketing Pure-ific, one of our OTC products, on a limited basis to establish proof of concept, which we believe we have accomplished. We have recognized minimal revenue from this product, as the sales of this product have not been material. We discontinued our proof-of-concept program in November 2006 and have, therefore, ceased selling our OTC products. In order for this product, and our other OTC products, to become commercially successful, the Company now intends to license the products which the Company has been discussing with interested groups and the Company also intends to sell a majority stake of the underlying assets via a non-core spin-out transaction.

Competition in the prescription drug, medical device and OTC pharmaceuticals markets is intense, and we may be unable to succeed if our competitors have more funding or better marketing.

The pharmaceutical and biotechnology industries are intensely competitive. Other pharmaceutical and biotechnology companies and research organizations currently engage in or have in the past engaged in research efforts related to treatment of dermatological conditions or cancers of the skin, liver and breast, which could lead to the development of products or therapies that could compete directly with the prescription drug, medical device and OTC products that we are seeking to develop and market.

Many companies are also developing alternative therapies to treat cancer and dermatological conditions and, in this regard, are our competitors. Many of the pharmaceutical companies developing and marketing these competing products have significantly greater financial resources and expertise than we do in:

- research and development,
- manufacturing,

- preclinical and clinical testing,
- obtaining regulatory approvals, and
- marketing.

Smaller companies may also prove to be significant competitors, particularly through collaborative arrangements with large and established companies. Academic institutions, government agencies, and other public and private research organizations may also conduct research, seek patent protection, and establish collaborative arrangements for research, clinical development, and marketing of products similar to ours. These companies and institutions compete with us in recruiting and retaining qualified scientific and management personnel as well as in acquiring technologies complementary to our programs.

In addition to the above factors, we expect to face competition in the following areas:

- product efficacy and safety;
- the timing and scope of regulatory consents;
- availability of resources;
- reimbursement coverage;
- price; and
- patent position, including potentially dominant patent positions of others.

As a result of the foregoing, our competitors may develop more effective or more affordable products or achieve earlier product commercialization than we do.

Product Competition. Additionally, since our formerly marketed products are generally established and commonly sold, they were subject to competition from products with similar qualities when we marketed them.

Our OTC product Pure-ific, when we sold it in the proof-of-concept stage, competed in the market with other hand sanitizing products, including in particular, the following hand sanitizers:

- Purell (owned by Johnson & Johnson),
- Avagard D (manufactured by 3M), and
- a large number of generic and private-label equivalents to these market leaders.

Our OTC product GloveAid represents a new product category that has no direct competitors; however, other types of products, such as AloeTouch® disposable gloves (manufactured by Medline Industries) target the same market niche.

Since our prescription products PV-10 and PH-10 have not yet been approved by the United Stated Food and Drug Administration, which we refer to as the “FDA,” or introduced to the marketplace, we cannot estimate what competition these products might face when they are finally introduced, if at all. We cannot assure you that these products will not face significant competition for other prescription drugs and generic equivalents.

If we are unable to secure or enforce patent rights, trademarks, trade secrets or other intellectual property our business could be harmed.

We may not be successful in securing or maintaining proprietary patent protection for our products and technologies we develop or license. In addition, our competitors may develop products similar to ours using methods and technologies that are beyond the scope of our intellectual property protection, which could reduce our anticipated sales. While

some of our products have proprietary patent protection, a challenge to these patents can be subject to expensive litigation. Litigation concerning patents, other forms of intellectual property, and proprietary technology is becoming more widespread and can be protracted and expensive and can distract management and other personnel from performing their duties.

We also rely upon trade secrets, unpatented proprietary know-how, and continuing technological innovation to develop a competitive position. We cannot assure you that others will not independently develop substantially equivalent proprietary technology and techniques or otherwise gain access to our trade secrets and technology, or that we can adequately protect our trade secrets and technology.

If we are unable to secure or enforce patent rights, trademarks, trade secrets, or other intellectual property, our business, financial condition, results of operations and cash flows could be materially adversely affected. If we infringe on the intellectual property of others, our business could be harmed.

We could be sued for infringing patents or other intellectual property that purportedly cover products and/or methods of using such products held by persons other than us. Litigation arising from an alleged infringement could result in removal from the market, or a substantial delay in, or prevention of, the introduction of our products, any of which could have a material adverse effect on our business, financial condition, results of operations, and cash flows.

If we do not update and enhance our technologies, they will become obsolete.

The pharmaceutical market is characterized by rapid technological change, and our future success will depend on our ability to conduct successful research in our fields of expertise, to discover new technologies as a result of that research, to develop products based on our technologies, and to commercialize those products. While we believe that our current technology is adequate for our present needs, if we fail to stay at the forefront of technological development, we will be unable to compete effectively. Our competitors are using substantial resources to develop new pharmaceutical technologies and to commercialize products based on those technologies. Accordingly, our technologies may be rendered obsolete by advances in existing technologies or the development of different technologies by one or more of our current or future competitors.

If we lose any of our key personnel, we may be unable to successfully execute our business plan.

Our business is presently managed by four key employees:

- H. Craig Dees, Ph.D., our Chief Executive Officer;
- Timothy C. Scott, Ph.D., our President;
- Eric A. Wachter, Ph.D. our Executive Vice President - Pharmaceuticals; and
- Peter R. Culpepper, CPA, our Chief Financial Officer and Chief Operating Officer.

In addition to their responsibilities for management of our overall business strategy, Drs. Dees, Scott and Wachter are our chief researchers in the fields in which we are developing and planning to develop prescription drugs, medical devices and OTC products. The loss of any of these key employees could have a material adverse effect on our operations, and our ability to execute our business plan might be negatively impacted. Any of these key employees may leave their employment with us if they choose to do so, and we cannot assure you that we would be able to hire similarly qualified employees if any of our key employees should choose to leave.

Because we have only four employees in total, our management may be unable to successfully manage our business.

In order to successfully execute our business plan, our management must succeed in all of the following critical areas:

- Researching diseases and possible therapies in the areas of dermatology and skin care, oncology, and biotechnology;

- Developing prescription drug, medical device, and OTC products based on our research;
- Marketing and selling developed products;
- Obtaining additional capital to finance research, development, production, and marketing of our products; and
- Managing our business as it grows.

As discussed above, we currently have only four employees, all of whom are full-time employees. The greatest burden of succeeding in the above areas, therefore, falls on Drs. Dees, Scott, Wachter, and Mr. Culpepper. Focusing on any one of these areas may divert their attention from our other areas of concern and could affect our ability to manage other aspects of our business. We cannot assure you that our management will be able to succeed in all of these areas or, even if we do so succeed, that our business will be successful as a result. We anticipate adding an additional regulatory affairs officer on a consulting basis within several months. While we have not historically had difficulty in attracting employees, our small size and limited operating history may make it difficult for us to attract and retain employees in the future, which could further divert management's attention from the operation of our business.

Our common stock price can be volatile because of several factors, including a limited public float, which has increased significantly from 2005 to 2008.

During the year ended December 31, 2008, the sale price of our common stock fluctuate