INVITROGEN CORP
Form POS AM
September 08, 2004
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As filed with the Securities and Exchange Commission on September 8, 2004

Registration No. 333-115611

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Post-Effective Amendment No. 1 to

Form S-3

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

INVITROGEN CORPORATION

(Exact name of registrant as specified in its charter)

Delaware	**33-0373077**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**

1600 Faraday Avenue

Carlsbad, California 92008

(760) 603-7200

(Address, including zip code, and telephone number, including area

code, of registrant s principal executive offices)

GREGORY T. LUCIER

1600 Faraday Avenue

Carlsbad, California 92008

(760) 603-7200

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

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Approximate date of commencement of proposed sale to the public: As soon as practicable after this registration statement becomes effective.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box: ¨

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

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

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

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

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

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PROSPECTUS

$450,000,000

INVITROGEN CORPORATION

1.5% Convertible Senior Notes due 2024

4,410,675 Shares of Common Stock Issuable on Conversion of the Notes

This prospectus relates to 1.5% Convertible Senior Notes due 2024 of Invitrogen Corporation, a Delaware corporation (Invitrogen), held by certain security holders who may offer for sale the notes and shares of our common stock into which the notes are convertible at any time, at market prices prevailing at the time of sale or at privately negotiated prices. The selling security holders may sell the notes or the common stock directly to purchasers or through underwriters, broker-dealers or agents, that may receive compensation in the form of discounts, concessions or commissions. We will not receive any proceeds from this offering.

You may convert the notes into shares of our common stock under certain circumstances described in this prospectus before their maturity unless we have previously redeemed or repurchased them. The notes will be due on February 15, 2024. The conversion rate is 9.8015 shares per each $1,000 principal amount of notes, subject to adjustment in certain circumstances. This is equivalent to a conversion price of approximately $102.03 per share. The notes are not listed on any securities exchange or included in any automated quotation system. The notes are eligible for trading in the Private Offerings, Resale and Trading through Automated Linkages (PORTAL) Market of the National Association of Securities Dealers, Inc. Our common stock is quoted on the Nasdaq National Market under the symbol IVGN. On September 7, 2004, the last reported sales price for our common stock as quoted on the Nasdaq National Market was $50.16 per share.

We will pay interest on the notes on February 15 and August 15 of each year. The first interest payment was made on August 15, 2004. The notes are our senior unsecured obligations and rank equally in right of payment with all our existing and future unsecured and unsubordinated indebtedness, senior to our existing and future subordinated indebtedness. The notes will be issued only in denominations of $1,000 and integral multiples of $1,000.

We have the right to redeem all or a portion of the notes that have not been previously converted at the redemption prices set forth in this prospectus on or after February 15, 2012. On February 15, 2012, 2017 and 2022, and after a repurchase event, as described in this prospectus, you may require us to repurchase any notes that you hold.

Investing in the notes and our common stock involves risk. See Risk Factors beginning on page 7.

THE SECURITIES AND EXCHANGE COMMISSION HAS NOT APPROVED OR DISAPPROVED

OF THESE SECURITIES OR PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ADDITIONALLY, NO STATE SECURITIES COMMISSION HAS APPROVED

OR DISAPPROVED OF THESE SECURITIES OR PASSED UPON THE ACCURACY OR

ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS

A CRIMINAL OFFENSE.

The date of this prospectus is September 8, 2004.

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SUMMARY

This summary highlights certain important information regarding our business and this offering. We have incorporated certain financial and other information in this prospectus by reference. This summary may not contain all the information that may be important to you. You should carefully read this entire prospectus, especially the section entitled Risk Factors, as well as any supplemental material and any documents that are incorporated by reference. Unless the context requires otherwise, references to Invitrogen, we, our, us, and similar terms refer to Invitrogen Corporation and its consolidated subsidiaries.

Invitrogen Corporation

We are a leading supplier of kits, reagents, sera and cell media and informatics software for life sciences research, drug discovery, and the production of biopharmaceuticals with $649 million of sales in 2002 and $778 million of sales in 2003. We offer a full range of products that enable researchers to understand the molecular basis of life and potential mechanisms of disease, as well as identify attractive targets for drug development. Our products are also used to support the clinical development and commercial production of biopharmaceuticals.

Our target markets

The principal markets for our products include the life sciences research market and the biopharmaceutical production market. The life sciences research market consists of laboratories generally associated with universities, medical research centers, government institutions, and other research institutions as well as biotechnology, pharmaceutical, energy, agricultural and chemical companies. Life sciences researchers use our reagents and informatics to perform a broad range of experiments in the laboratory.

The biopharmaceutical production market consists of biotechnology and pharmaceutical companies that use sera and media for the production of clinical and commercial quantities of biopharmaceuticals. Biopharmaceuticals include interferons, interleukins, t-PA and monoclonal antibodies. The selection of sera and media generally occurs early in the clinical process and continues through commercialization. Other industries consume sera and media for the commercial production of genetically engineered products including food processing and agricultural industries.

Our strategy

Our objective is to provide essential life science technologies for disease research, drug discovery and commercial bioproduction. Our strategies to achieve this objective include:

New Product Innovation and Development

Developing innovative new products. We place a great emphasis on internally developing new technologies for the life sciences research and biopharmaceutical production markets. A significant portion of our growth and current revenue base has been

created by the application of technology to accelerate the drug discovery process of our customers. We expect to increase research and development spending as a percentage of sales over the next several quarters and to focus new product development on three critical technology areas:

Protein production, purification and characterization;

Biochemical and cell based assays; and

Labeling and detection, particularly in proteomics.

In-licensing technologies. We actively and selectively in-license new technologies, which we modify to create high value kits, many of which address bottlenecks in the research or drug

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discovery laboratories. We have a dedicated group of individuals that is focused on in-licensing technologies from academic and government institutions, as well as biotechnology and pharmaceutical companies.

Acquisitions. We actively and selectively seek to acquire and integrate companies with complementary products and technologies, trusted brand names, strong market positions, and strong intellectual property positions. We have acquired several companies since we became a public company in 1999. Our most significant acquisitions include Life Technologies, BioReliance, Molecular Probes, PanVera, NOVEX, Research Genetics and InforMax.

Our recent significant acquisitions include:

Our February 6, 2004, acquisition of all outstanding shares of common stock of BioReliance Corporation. BioReliance is a leading contract service organization providing testing, development and manufacturing services for biologic-based drugs to biotechnology and pharmaceutical companies worldwide. The results of operations of BioReliance will be included in our consolidated financial statements in the BioProduction segment from the date of acquisition.

Our August 20, 2003, acquisition of all outstanding shares of common stock of Molecular Probes, Inc., a privately-held corporation based in Eugene, Oregon. Molecular Probes is a provider of fluorescence-based technologies for use in labeling molecules for biological research and drug discovery. The results of operations of Molecular Probes are included in our consolidated financial statements in the BioDiscovery segment from the date of acquisition.

Our March 28, 2003, acquisition of products and technology rights from PanVera LLC, a wholly-owned subsidiary of Vertex Pharmaceuticals, Inc. Based in Madison, Wisconsin, our PanVera business provides products and services that are designed to accelerate the discovery of new medicines by the pharmaceutical and biopharmaceutical industries. Through this transaction, we have acquired PanVera s biochemical and cellular assay capabilities and its commercial portfolio of proprietary reagents, probes and proteins. As part of the transaction, we have also acquired PanVera s research, development and manufacturing facility in Madison. We plan to expand the sale of Pan Vera products to target a broader market, including academic and government researchers. The results of operations of PanVera are included in our consolidated financial statements in the BioDiscovery segment from the date of acquisition.

Leverage of Existing Sales and Distribution Network

Multi-national sales footprint. We have developed what we consider to be a world-class sales and distribution network with sales in approximately seventy countries throughout the world. Our sales force is highly-trained, with many of our sales-people possessing degrees in molecular biology, biochemistry or related fields. We believe our sales force has a proven track record for selling and distributing our products, and we expect to leverage this capacity to increase sales of our existing, newly developed and acquired products.

High customer satisfaction. Our sales, marketing, customer service and technical support staffs work well together to provide our customers exceptional service for our products, and we have been highly rated in customer satisfaction surveys. We expect to take advantage of this strength to attract new customers.

Rapid product delivery. We have the ability to ship typical orders on a same-day or next-day basis. We intend to use this ability to provide convenient service to our customers to generate additional sales.

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Our products

Our biodiscovery product segment supplies a full range of reagents, kits and informatics to enable scientists to isolate, amplify, purify, identify, and characterize genes and their related proteins. Our kits comprise all the reagents necessary to perform a specific experiment and are optimized to simplify and improve the reliability and yield of such experiment. Scientists use our reagents and kits to elucidate the molecular basis of disease, identify disease targets for drug discovery, and understand the therapeutic mechanism of a drug.

Our bioproduction segments supply a full range of mammalian sera, cell and tissue culture media, and reagents. These products provide the physiological conditions and nutrients necessary for cells to grow outside their native environment. Pharmaceutical and biotechnology companies use our products to support cells and organisms utilized in the production of biopharmaceuticals. Scientists in academic, government, and industrial laboratories also use our products to support cells utilized in research.

Sales and marketing

We sell most of our products through our own sales force, and the remaining products are sold through agents or distributors. We currently market our products directly in over 24 countries throughout the world and sell through distributors or agents in approximately 45 additional countries. These independent distributors may also market research products for other companies, including some products that are competitive with our offerings. As of August 14, 2004 we employed approximately 888 people in our sales and marketing group.

We were incorporated in 1989 under the laws of California and were reincorporated in 1997 under the laws of Delaware. Our principal executive offices are located at 1600 Faraday Avenue, Carlsbad, California 92008. Our telephone number is (760) 603-7200. Our website address is www.invitrogen.com. Our website is not part of this prospectus.

Recent Developments

In 2002, our board of directors authorized the repurchase of up to $300 million of our common stock over three years, ending in July 2005, of which $100 million was repurchased in 2002. We have repurchased 1,629,534 shares of common stock at a total cost of approximately $81.3 million through August 31, 2004, which will be reported as a reduction in stockholders equity as Treasury Stock. The timing and price of any repurchases will depend on market conditions and other factors. Funds for any repurchase are expected to come primarily from cash generated from operations, or funds on hand.

The Offering

Securities Offered	$450,000,000 principal amount of 1.5% convertible senior notes due 2024.
Maturity	February 15, 2024, unless earlier redeemed repurchased or converted.

Ranking	The notes are our senior unsecured obligations and rank equally in right of payment with all our existing and future unsecured and unsubordinated indebtedness, senior to our existing and future subordinated indebtedness. The notes are not guaranteed by any of our subsidiaries and, accordingly, the notes are effectively subordinated to the indebtedness and other liabilities of our subsidiaries, including trade creditors. As of June 30, 2004, our subsidiaries had approximately $50.8 million of outstanding indebtedness and trade payables (excluding intercompany liabilities and liabilities of the type not required to be reflected on a balance sheet in accordance with U.S. generally accepted accounting principles).

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Interest	1.5% per year on the principal amount, payable semi-annually in arrears on August 15 and February 15 of each year, beginning August 15, 2004.
Contingent Interest	We will pay contingent interest to the holders of notes during any six-month period from February 15 to August 14 and from August 15 to February 14, commencing with the six-month period beginning on February 15, 2012 if the average market price of a note for the five trading days ending on the third trading day immediately preceding the first day of the relevant six-month period equals 120% or more of the principal amount of such notes. The amount of contingent interest payable per note in respect of any six-month period will equal 0.35% of the average market price of a note for the applicable five trading day reference period ending on and including the third trading day immediately preceding the first day of such six-month interest period.
Conversion Rights	Holders may convert their notes into shares of our common stock prior to stated maturity under the following circumstances: during any fiscal quarter (beginning with the quarter ending June 30, 2004) if the sale price of our common stock for at least 20 consecutive trading days in the 30 consecutive trading-day period ending on the last trading day of the immediately preceding fiscal quarter exceeds 120% of the conversion price on that 30th trading day; during any five consecutive trading day period immediately following any five consecutive trading day period (the Note Measurement Period) in which the average market price for the notes during that Note Measurement Period was less than 97% of the average conversion value for the notes during such period; provided, however, that if, at the time of conversion pursuant to this provision, the closing sale price of our common stock is greater than 100% of the conversion price but equal to or less than 120% of the conversion price, then the holders will receive, in lieu of common stock based on the applicable conversion rate, common stock, at our option, with a value equal to the principal amount of the notes on the conversion date, which we refer to as the value conversion; upon the occurrence of specified corporate transactions; or if we have called the notes for redemption.

The notes are convertible into shares of our common stock at an initial conversion rate of 9.8015 shares per $1,000 principal amount of notes (which represents a conversion price of approximately $102.03 per share) under the conditions and subject to such adjustments as are described under Description of the Notes Conversion Rights and Conversion Rate Adjustments.

Optional Redemption	On or after February 15, 2012, we may redeem the notes for cash at any time as a whole, or from time to time in part, at a price equal to 100% of the principal amount of the notes to be redeemed plus any

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accrued and unpaid interest, including contingent interest, if any, to, but not including, the redemption date. For more information about redemption of the notes at our option, see Description of the Notes Optional Redemption by Us.

Repurchase of Notes at the Option of Holders — Each holder of the notes may require us to repurchase all or a portion of that holder s notes on February 15 of 2012, 2017 and 2022, at a repurchase price equal to 100% of the principal amount of those notes plus accrued and unpaid interest, including contingent interest, if any, to, but not including, the date of repurchase. We will pay the repurchase price of any notes repurchased by us in cash. For more information about the purchase of the notes by us at the option of the holder, see Description of the Notes Repurchase of Notes at the Option of Holders Optional put.

Repurchase of Notes Upon a Repurchase Event — If a repurchase event, as defined, occurs, each holder may require us to purchase all or a portion of the holder s notes at 100% of the principal amount, plus any accrued and unpaid interest to the repurchase date. See Description of the Notes Repurchase of Notes at the Option of Holders Repurchase of notes at the option of holders upon a repurchase event.

Registration Rights — We have agreed to:

- file a shelf registration statement with respect to the resale of the notes and the shares of our common stock issuable upon conversion of the notes with the SEC within 90 days after the first date of original issuance of the notes; and
- use our reasonable best efforts to cause such shelf registration statement to become effective within 180 days after the first date of original issuance of the notes.

We also have agreed to use our reasonable best efforts to cause the shelf registration statement to be effective until the earliest of:

- the date when all of the registrable securities covered by the shelf registration statement have been sold pursuant to the shelf registration;
- the date on which all registrable securities held by non-affiliates are eligible to be sold in the absence of any registration;
- the date on which there cease to be outstanding any registrable securities; or
- two years from the date of original issuance of the notes.

We will be required to pay additional interest, which we refer to as special interest, if we fail to comply with our obligations to register

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	the notes and the shares of our common stock issuable upon conversion of the notes within the specified time periods. See Description of the Notes Registration Rights.
Listing and Trading	We expect that the notes will be eligible for trading on the PORTAL Market. Our common stock is quoted on the Nasdaq National Market under the symbol IVGN.

Ratio of Earnings to Fixed Charges

	Six Months Ended June 30, 2004[2]	Years Ended December 31, 2003	2002	2001	2000	1999
Ratio of earnings to fixed charges[1]	2.71	3.79	3.70			14.5

(1) For the years ended December 31, 2001 and 2000, earnings were insufficient to cover fixed charges by $138.0 million and $54.6 million, respectively. Earnings are defined as income (loss) before provision for income taxes and minority interest plus Fixed Charges less minority interest in pre-tax income of subsidiaries that have not incurred Fixed Charges. Fixed Charges are defined as the sum of interest expensed plus amortized capitalized expenses related to indebtedness plus an estimate of the interest within rental expense.

(2) Includes $6.8 million in fixed charges incurred during the three months ended March 31, 2004, on the early retirement of our $172.5 million in principal amount 5 1/2% convertible notes. The $6.8 million amount is comprised of $4.1 million for the call premium and $2.7 million for the write-off of unamortized deferred financing costs.

Risk Factors

You should refer to the section entitled Risk Factors for an explanation of certain risks related to investing in the notes.

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RISK FACTORS

An investment in the notes involves the following risks. You should carefully consider these risks, together with other matters described in this prospectus, or incorporated into this prospectus by reference, before you purchase any of the notes. If any of the following risks occurs, our business, financial condition or operating results could be harmed. In such case, the trading price of our securities could decline and you could lose all or part of your investment. The risks described below are not the only ones we face. Additional risks not presently known to us or that we currently deem immaterial may also impair our business operations. Certain statements in this prospectus (including certain of the following factors) constitute forward-looking statements. Please refer to the section entitled Forward-Looking Statements.

RISKS RELATED TO THE GROWTH OF OUR BUSINESS

Failure to manage growth could impair our business.

Our business has grown rapidly. Our net revenues increased from $55.3 million in 1997 to $777.7 million in 2003. During that same period we significantly expanded our operations in the United States, Europe and Asia-Pacific. The number of our employees increased from 272 at December 31, 1996, to approximately 3,850 at August 14, 2004.

It is difficult to manage this rapid growth, and our future success depends on our ability to implement:

- research and product development programs;
- sales and marketing programs;
- manufacturing operations at an appropriate capacity;
- customer support programs;
- operational and financial control systems; and
- recruiting and training programs.

Our ability to offer products and services successfully and to implement our business plan in a rapidly evolving market requires an effective planning, reporting and management process. We expect that we will need to continue to improve our financial and managerial controls, reporting systems and procedures, and to expand and train our workforce worldwide. We also need to continue to manufacture our products efficiently and to control or adjust the expenses related to research and development, marketing, sales and general and administrative activities in response to changes in revenues. If we are not successful in efficiently manufacturing our products or managing such expenses there could be an adverse impact on our earnings and the growth of our business.

Our acquisition strategy has required substantial investments in operations, product research and development, administration and sales and marketing. These are significant expenses. Our failure to manage successfully and coordinate the growth of the combined company could have an adverse impact on our revenues and profits. In addition, there is no guarantee that some of the businesses we have acquired will become profitable or remain so.

Failure to integrate acquired businesses into our operations successfully could reduce our revenues and profits.

Since the beginning of 2000, we have made several acquisitions. Our integration of the operations of BioReliance and other acquired companies and businesses will continue to require significant efforts, including the coordination of information technologies, research and development, sales and marketing, manufacturing and finance. We may find it difficult to integrate fully the operations of these acquired companies and businesses.

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Our U.S. headquarters are located in Carlsbad, California. We also have significant operations in Frederick and Rockville, Maryland, Grand Island, New York, Madison, Wisconsin, Eugene, Oregon, and New Haven, Connecticut, as well as locations throughout Europe, Asia-Pacific and the Americas. Because our facilities are physically separated, it may be difficult for us to communicate effectively with, manage and integrate these employees and operations with the rest of Invitrogen. Such difficulties could seriously damage our operations and consequently our financial results. We may decide in the future that we can better manage our operations by combining some of our facilities. There are risks involved in combining facilities.

Management may have its attention diverted while trying to continue to integrate companies and businesses that we have acquired, including BioReliance. Such diversion of management s attention or difficulties in the transition process could have a harmful effect on our revenues and profits. If we are not able to integrate the operations of all these companies and businesses successfully, we may not be able to meet our expectations of future results of operations.

Factors that will affect the success of our acquisitions include:

- presence or absence of adequate internal controls and/or significant fraud in the financial systems of acquired companies;
- decrease in customer loyalty and product orders caused by dissatisfaction with the combined companies product lines and sales and marketing practices, including price increases;
- the ability to retain key employees;
- competitive factors, including technological advances attained by competitors and patents granted to, or contested by competitors, which would result in increased efficiency in their ability to compete against us;
- the ability of the combined company to increase sales of all such companies products;
- the ability of the combined company to operate efficiently and achieve cost savings; and
- the ability of the combined company to integrate acquired technologies to develop new products.

Even if we are able to integrate our acquired operations, we cannot assure you that we will achieve synergies. Our failure to achieve synergies could have a material adverse effect on the business, results of operations and financial condition of the combined company.

Industry consolidation may lead to increased competition and may harm our operating results.

There has been a trend toward industry consolidation in our markets for the past several quarters. We expect this trend toward industry consolidation to continue as companies attempt to strengthen or hold their market positions in an evolving industry and as companies are acquired or are unable to continue operations. We believe that industry consolidation may result in stronger competitors that are better able to compete as sole-source vendors for customers. This could lead to more variability in operating results and could have a material adverse effect

on our business, operating results, and financial condition. Furthermore, particularly in the drug discovery market, consolidation could lead to fewer customers, with the effect that loss of a major customer could have a material impact on results not anticipated in a customer marketplace comprised of more numerous participants.

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RISKS RELATED TO OUR SALES

Competition in the life sciences research market, and/or a reduction in demand for our products, could reduce sales.

The markets for our products are very competitive and price sensitive. Other life science research product suppliers, as well as certain customers, such as large pharmaceutical companies, have significant financial, operational, sales and marketing resources, and experience in research and development. These and other companies may have developed or could in the future develop new technologies that compete with our products or even render our products obsolete. If a competitor develops superior technology or cost-effective alternatives to our kits and other products, our business, operating results, and financial condition could be seriously harmed. In addition, demand for our products may weaken due to reduction in research and development budgets, loss of distributors and other factors identified in this prospectus, which would have an adverse effect on our financial condition.

The markets for certain of our products, such as electrophoresis products, custom primers, amplification products, and fetal bovine serum, are also subject to specific competitive risks. These markets are highly price competitive. Our competitors have competed in the past by lowering prices on certain products. Our competitors may lower prices on these or other products in the future and we may, in certain cases, respond by lowering our prices. This would reduce revenues and profits. Conversely, failure to anticipate and respond to price competition may hurt our market share.

We believe that customers in our markets display a significant amount of loyalty to their initial supplier of a particular product. Therefore, it may be difficult to generate sales to potential customers who have purchased products from competitors. Additionally, instead of using kits, there are numerous scientists making materials themselves. To the extent we are unable to be the first to develop and supply new products, our competitive position will suffer.

Reduction in research and development budgets and government funding may affect sales.

Our customers include researchers at pharmaceutical and biotechnology companies, academic institutions, government laboratories and private foundations. Fluctuations in the research and development budgets of these researchers and their organizations, or shifts in their research priorities into areas where we do not complete, could have a significant effect on the demand for our products. Research and development budgets fluctuate due to changes in available resources, mergers of pharmaceutical and biotechnology companies, spending priorities and institutional budgetary policies. Our business could be seriously damaged by any significant decrease in life sciences research and development expenditures by pharmaceutical and biotechnology companies, academic institutions, government laboratories or private foundations.

In recent years, the pharmaceutical industry has undergone substantial downsizing and consolidation. Additional mergers or corporate consolidations in the pharmaceutical industry could cause us to lose existing customers and potential future customers, which could have a harmful effect on our business, financial condition and results of operations.

A significant portion of our sales have been to researchers at academic institutions, government laboratories and private foundations whose funding is dependent upon grants from government agencies such as the U.S. National Institutes of Health (NIH) and similar domestic and international agencies. Although the level of research funding has increased during the past several years, we cannot assure you that this trend will continue. The NIH budget has increased on average in excess of 10% in each of the past five years through fiscal 2003. Increases for fiscal

2004 were significantly less than this amount, and proposed increases for fiscal 2005 are in line with the 2004 increase. Government funding of research and development is subject to the political process, which is inherently fluid and unpredictable. Additionally, as the U.S. government continues to address program

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funding requirements in the current period of global unrest, including homeland security, any shift away from the funding of life sciences research and development may cause our customers to delay or forego purchases of our products. Our revenues may be adversely affected if our customers delay or cancel purchases as a result of these and other uncertainties or delays surrounding the approval of government budget proposals. Also, government proposals to reduce or eliminate budgetary deficits have sometimes included reduced allocations to the NIH and other government agencies that fund research and development activities. A reduction in government funding for the NIH or other government research agencies could seriously damage our business.

Our customers generally receive funds from approved grants at particular times of the year, for example as determined by the U.S. federal government. In the past, such grants have been frozen for extended periods or have otherwise become unavailable to various institutions without advance notice. The timing of the receipt of grant funds affects the timing of purchase decisions by our customers and, as a result, can cause fluctuations in our sales and operating results.

Loss of customers may hurt our sales, and customers may force us to use more expensive distribution channels.

Certain of our customers have developed purchasing initiatives to reduce the number of vendors from which they purchase in order to lower their supply costs. In some cases these accounts have established agreements with large distributors, which include discounts and the distributors direct involvement with the purchasing process. These activities may force us to supply the large distributors with our products at a discount to reach those customers. For similar reasons many larger customers, including the U.S. government, have requested and may in the future request, special pricing arrangements, including blanket purchase agreements. These agreements may limit our pricing flexibility, which could have an adverse impact on our business, financial condition and results of operations. Our pricing flexibility could particularly be affected with respect to electrophoresis products, custom oligonucleotides, amplification products, and fetal bovine serum. For a limited number of customers we have made sales, at the customer s request, through third-party Internet vendors. Although Internet sales through third parties have not had a significant impact to date, it is possible that this method of distribution could have a negative impact on our gross profits, because any commission paid on Internet sales would be an additional cost not incurred through the use of non-Internet vendors.

We have launched a biodefense initiative, which depends upon the acceptance of our products by the U.S. government and its defense contractors.

We have developed products for use in detecting exposure to biological pathogens, and have begun marketing those products to the U.S. government and several defense contractors. If our products do not perform well, or the U.S. government changes its priorities with respect to defense against biological and chemical weapons, our sales growth could be affected. In addition, some third parties could object to our development of biological defense products, which could have a negative impact on our company.

RISKS RELATED TO THE DEVELOPMENT AND MANUFACTURING OF OUR PRODUCTS

Our market share depends on new product introductions and acceptance.

Rapid technological change and frequent new product introductions are typical for the market for certain of our products and services. For example, prepackaged kits to perform research in particular cell lines and already-isolated genetic material only recently have come into widespread use among researchers. In addition, the market for the life science informatics products of our subsidiary, InforMax, is also in the

midst of rapid technological change. Our future success will depend in part on continuous, timely development and introduction of new products that address evolving market requirements and are attractive to customers. We believe successful new product introductions provide a significant competitive advantage because customers make an investment of time in selecting and learning to use a new product, and are reluctant to switch thereafter. We spend significant resources on internal research and development as well as on technology developed elsewhere to support our

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effort to develop and introduce new products. To the extent that we fail to introduce new and innovative products, we could fail to obtain an adequate return on these investments and could lose market share to our competitors, which would be difficult or impossible to regain. An inability, for technological or other reasons, to develop successfully and introduce new products could reduce our growth rate or otherwise damage our business.

In the past we have experienced, and we are likely to experience in the future, delays in the development and introduction of products. We cannot assure you that we will keep pace with the rapid rate of change in life sciences research and life science informatics software development, or that our new products will adequately meet the requirements of the marketplace or achieve market acceptance. Some of the factors affecting market acceptance of our products include:

availability, quality and price as compared to competitive products;

the functionality of new and existing products;

the timing of introduction of our products as compared to competitive products;

scientists and customers opinions of the product s utility and our ability to incorporate their feedback into future products;

citation of the products in published research; and

general trends in life sciences research and life science informatics software development.

The expenses or losses associated with unsuccessful product development activities or lack of market acceptance of our new products could seriously harm our business, financial condition and results of operations.

Failure to license new technologies could impair our new product development.

Our business model of providing products to researchers working on a variety of genetic and related projects requires us to develop a wide spectrum of products. To generate broad product lines it is sometimes advantageous to license technologies from the scientific community at large rather than depending exclusively on the inventions of our own employees. As a result, we believe our ability to in-license new technologies from third parties is and will continue to be critical to our ability to offer new products. A significant portion of our current revenues are from products manufactured or sold under licenses from third parties.

From time to time we are notified or become aware of patents held by third parties which are related to technologies we are selling or may sell in the future. After a review of these patents, we may decide to obtain a license for these technologies from such third parties. We are currently in the process of negotiating several such licenses and expect that we will also negotiate these types of licenses in the future. We cannot assure you that we will be able to negotiate such licenses on favorable terms, or at all.

Our ability to gain access to technologies that we need for new products and services depends in part on our ability to convince inventors and their agents or assignees that we can successfully commercialize their inventions. We cannot assure you that we will be able to continue to identify new technologies of interest to our customers which are developed by others. Even if we are able to identify new technologies of interest, we may not be able to negotiate a license on acceptable terms, or at all.

Loss of licenses could hurt our performance.

A small number of our licenses do not run for the length of the underlying patent. We may not be able to renew our existing licenses on favorable terms, or at all. If we lose the rights to a patented technology, we may need to stop selling these products and possibly other products, redesign our products or lose a competitive advantage. Potential competitors could in-license technologies that we fail to license and potentially erode our market share for these and other products.

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Our licenses typically subject us to various economic and commercialization obligations. If we fail to comply with these obligations we could lose important rights under a license, such as the right to exclusivity in a certain market. In some cases, we could lose all rights under a license. In addition, certain rights granted under the license could be lost for reasons out of our control. For example, the licensor could lose patent protection for a number of reasons, including invalidity of the licensed patent, or a third party could obtain a patent that curtails our freedom to operate under one or more licenses. We do not receive indemnification from a licensor against third-party claims of intellectual property infringement.

Failure to obtain products and components from third-party manufacturers could affect our ability to manufacture and deliver our products.

We rely on third-party manufacturers to supply many of our raw materials, product components, and in some cases, entire products, none of which are material to our business. In addition, we have a single source for supplies of some raw materials and components to our products. Manufacturing problems may occur with these and other outside sources. If such problems occur, we cannot assure you that we will be able to manufacture our products profitably or on time.

Fluctuation in the price and supply of raw FBS could affect our business.

The supply of raw fetal bovine serum (FBS) is sometimes limited because serum collection tends to be cyclical. This can cause the price of raw FBS to fluctuate. The profit margins we achieve on finished FBS, one of our major products, have been unstable in the past because of the fluctuations in the price of raw FBS, and any increase in the price could adversely affect those profit margins. In addition, if we are unable to obtain an adequate supply of FBS, or if we are unable to meet demand for FBS from supplies outside the U.S., we may lose market share.

Violation of government regulations or voluntary quality programs could result in loss of sales and customers and additional expense to attain compliance.

Certain products and test services provided by our BioProduction segment and our BioReliance subsidiary are regulated by the U.S. Food and Drug Administration (FDA) as medical devices, pharmaceuticals, or biologics. Additionally, the FDA regulates test services provided by our BioReliance subsidiary. As such, we must register with the FDA as both a medical device manufacturer and a manufacturer of drug products and comply with all required regulations. Failure to comply with these regulations can lead to sanctions by the FDA such as written observations made following inspections, warning letters, product recalls, fines, product seizures and consent decrees. Test data for use in client submissions with the FDA could be disqualified. If the FDA were to take such actions, the FDA s observations, warnings, etc. would be available to the public. Such publicity could affect our ability to sell these regulated products.

Additionally, some of our customers use our products and services in the manufacturing process for their drug and medical device products, and such end products are regulated by the FDA under GMP. Although the customer is ultimately responsible for GMP compliance for their products, it is also the customer s expectation that the materials sold to them will meet GMP requirements. We could lose sales and customers, and incur products liability claims, if these products do not meet GMP requirements.

ISO is an internationally recognized voluntary quality standard that requires compliance with a variety of quality requirements somewhat similar to the GMP requirements. The operations of our BioProduction segments and Eugene, Oregon facilities are intended to comply with ISO 9001.

Failure to comply with this voluntary standard can lead to observations of non-compliance or even suspension of ISO certification by the certifying unit. If we lose ISO certification, this loss could cause some customers to purchase products from other suppliers.

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If we violate a government mandated or voluntary quality program, we may incur additional expense to comply with the government mandated or voluntary standards. That expense may be material, and we may not have anticipated that expense in our financial forecasts. Our financial results could suffer as a result of these increased expenses.

RISKS RELATED TO OUR INTELLECTUAL PROPERTY

Inability to protect our technologies could affect our ability to compete.

Our success depends to a significant degree upon our ability to develop proprietary products and technologies. However, we cannot assure you that patents will be granted on any of our patent applications. We also cannot assure you that the scope of any of our issued patents will be sufficiently broad to offer meaningful protection. We only have patents issued in selected countries. Therefore, third parties can make, use, and sell products covered by our patents in any country in which we do not have patent protection. In addition, our issued patents or patents we license could be successfully challenged, invalidated or circumvented so that our patent rights would not create an effective competitive barrier. We provide our customers the right to use our products under label licenses that are for research purposes only. These licenses could be contested, and we cannot assure you that we would either be aware of an unauthorized use or be able to enforce the restrictions in a cost-effective manner.

If a third party claimed an intellectual property right to technology we use, we might need to discontinue an important product or product line, alter our products and processes, defend our right to use such technology in court or pay license fees. Although we might under these circumstances attempt to obtain a license to such intellectual property, we may not be able to do so on favorable terms, or at all. Additionally, if our products are found to infringe a third party s intellectual property, we may be required to pay damages for past infringement, and lose the ability to sell certain products or receive licensing revenues.

Disclosure of trade secrets could aid our competitors.

We attempt to protect our trade secrets by entering into confidentiality agreements with third parties, our employees and consultants. However, these agreements can be breached and, if they are, there may not be an adequate remedy available to us. If our trade secrets become known we may lose our competitive position.

Intellectual property litigation and other litigation could harm our business.

Litigation regarding patents and other intellectual property rights is extensive in the biotechnology industry. We are aware that patents have been applied for and, in some cases, issued to others claiming technologies that are closely related to ours. We are currently a defendant in several court actions involving our intellectual property. As a result, and in part due to the ambiguities and evolving nature of intellectual property law, we periodically receive notices of potential infringement of patents held by others. We may not be able to resolve these types of claims successfully in the future.

We are currently enforcing our intellectual property rights through patent litigation in several court actions. We have incurred substantial costs, and are currently incurring substantial costs, in enforcing our intellectual property rights, primarily relating to H minus reverse transcriptase, which is the basis for our Superscript and related product lines, and we expect to incur such costs in the future for Superscript and other technologies. In the event of additional intellectual property disputes, we may be involved in further litigation. In addition to court actions, patent litigation could involve proceedings before the U.S. Patent and Trademark Office or the International Trade Commission. Intellectual property litigation can be extremely expensive, and such expense, as well as the consequences should we not prevail, could seriously harm our business. If we do not prevail in our pending patent litigation relating to H minus reverse transcriptase, we may be unable to prevent third parties from using this technology in the commercial marketplace. This could have a seriously harmful effect on our business.

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RISKS RELATED TO OUR OPERATIONS

Litigation may harm our business or otherwise distract our management.

Substantial, complex or extended litigation could cause us to incur large expenditures and distract our management. For example, lawsuits by employees, stockholders, collaborators, distributors, customers, or end-users of our products or services could be very costly and substantially disrupt our business. Disputes from time to time with such companies or individuals are not uncommon, and we cannot assure you that we will always be able to resolve such disputes out of court or on terms favorable to us. Unexpected results could cause our financial exposure in these matters to exceed stated reserves and insurance, requiring us to allocate additional funds and other resources to address these liabilities.

In particular, in acquiring Dexter and Life Technologies, Inc., we assumed certain of Dexter s and Life Technologies, Inc. s liabilities, ongoing disputes and litigation. These include environmental and warranty claims, among others.

Loss of key personnel could hurt our business.

Our products and services are highly technical in nature. In general, only highly qualified and trained scientists have the necessary skills to develop and market our products and provide our services. In addition, some of our manufacturing positions are highly technical as well. We face intense competition for these professionals from our competitors, customers, marketing partners and other companies throughout our industry. We do not generally enter into employment agreements requiring these employees to continue in our employment for any period of time. Any failure on our part to hire, train, and retain a sufficient number of qualified professionals would seriously damage our business. Additionally, some measures that we implement during the course of integrating acquired companies and businesses into our operations may be disruptive to some of our key personnel, including those in research and development and manufacturing, and cause them to leave us. If we were to lose a sufficient number of our key employees, including research and development scientists, and were unable to replace them or satisfy our needs for research and development through outsourcing, it could seriously damage our business.

We have a significant amount of debt which could adversely affect our financial condition.

We have $500 million of subordinated convertible notes that are due in 2006, $350 million of the senior convertible notes that are due in 2023 and $450 million of senior convertible notes that are due in 2024 that are offered hereby by our selling security holders, which is in aggregate a significant amount of debt and debt service obligations. If we are unable to generate sufficient cash flow or otherwise obtain funds necessary to make required payments on these notes, we will be in default under the terms of the loan agreements, or indentures, which could, in turn, cause defaults under our other existing and future debt obligations. These notes also could have a negative effect on our earnings per share, depending on the rate of interest we earn on cash balances and our stock price, and on our ability to make favorable acquisitions using the proceeds from the notes.

Even if we are able to meet our debt service obligations, the amount of debt we have could adversely affect us in a number of ways, including by:

limiting our ability to obtain any necessary financing in the future for working capital, capital expenditures, debt service requirements, or other purposes;

limiting our flexibility in planning for, or reacting to, changes in our business;

placing us at a competitive disadvantage relative to our competitors who have lower levels of debt;

making us more vulnerable to a downturn in our business or the economy generally; and

requiring us to use a substantial portion of our cash to pay principal and interest on our debt, instead of contributing those funds to other purposes such as working capital and capital expenditures.

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We could lose the tax deduction on our convertible senior notes due 2023 and the convertible senior notes due 2024 under certain circumstances.

We could lose some or all of the tax deduction for interest expense associated with our convertible senior notes due 2023 and the convertible senior notes due in 2024 if, under certain circumstances, the foregoing notes are not subject to the special Treasury Regulations governing contingent payment debt instruments. We also could lose the tax deduction for interest expense associated with the foregoing notes if we were to invest in non-taxable investments.

Absence of dividends could reduce our attractiveness to investors.

Some investors favor companies that pay dividends, particularly in market downturns. We have never declared or paid any cash dividends on our common stock, although some of the companies that we have acquired, including Life Technologies and Dexter, declared and paid dividends prior to the acquisitions. We currently intend to retain any future earnings for funding growth and, therefore, we do not currently anticipate paying cash dividends on our common stock.

Our anti-takeover defense provisions may deter potential acquirers and may depress our stock price.

Certain provisions of our certificate of incorporation, by-laws and Delaware law, as well as certain agreements we have with our executives, could be used by our incumbent management to make it substantially more difficult for a third party to acquire control of us. These provisions include the following:

- we may issue preferred stock with rights senior to those of our common stock;
- we have adopted a stock purchase rights plan;