BRITESMILE INC
Form 10-Q
November 17, 2003

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

[X] QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the Quarterly Period Ended: September 27, 2003

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: 1-11064

BRITESMILE, INC.
(Exact name of business issuer as specified in its charter)

UTAH	87-0410364
(State or other jurisdiction of incorporation or organization)	(IRS employer identification no.)

490 North Wiget Lane Walnut Creek, California	94598
(Address of principal executive offices)	(Zip Code)

(925) 941-6260
(Issuer's telephone number, including area code)

(Former name, former address and former fiscal year, if changed since last report)

Check whether the issuer (1) filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act during the past 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.

X Yes No

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

Yes __ No X

The Company had 2,752,513 shares of common stock outstanding at November 11, 2003.

BRITESMILE, INC. AND SUBSIDIARIES

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PART I - FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

BRITESMILE, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
ASSETS
($ in thousands, except share data)
(Unaudited)

	September 27, 2003	Decem 28 200
CURRENT ASSETS:		
Cash and cash equivalents	$ 1,982	$ 3
Trade accounts receivable, net of allowance for doubtful accounts of $556 and $506, respectively	2,134	2
Inventories	1,736	2
Prepaid expenses and other	977	
Total current assets	6,829	8
PROPERTY AND EQUIPMENT, net	17,157	20
INTANGIBLES	5,268	
OTHER ASSETS	3,290	2
TOTAL ASSETS	$ 32,544	$ 31

continued

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

BRITESMILE, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS (continued)

LIABILITIES AND SHAREHOLDERS' EQUITY
($ in thousands, except share data)
(Unaudited)

	September 27, 2003	De
CURRENT LIABILITIES:		
Accounts payable	$ 4,531	$
Accrued expenses	5,437	
Deferred revenue	665	
Note payable to related party	500	
Subordinated convertible debenture, net of discount	-	
Accrued variable rent payable to EVL	3,870	
Capital lease obligation with related party.	701	
Total current liabilities	15,704	
Notes payable to related party, net	2,419	
Line of credit borrowings	6,940	
Capital lease obligations with related party, less current portion	1,370	
Accrued variable rent payable to EVL	-	
Convertible 2% debenture	3,500	
Other long-term liabilities	1,773	
Preferred Stock of Subsidiary	1,000	
Total long-term liabilities	17,002	
Total liabilities	32,706	
SHAREHOLDERS' EQUITY (DEFICIT):		
Common stock, $.001 par value; 50,000,000 shares authorized; 2,749,153 and 2,428,464 shares issued and outstanding, respectively	37	
Additional paid-in capital	145,203	
Accumulated deficit	(145,402)	
Total shareholders' equity (deficit)	(162)	
Total liabilities and shareholders' equity (deficit)	$ 32,544	$

concluded

The accompanying notes

are an integral part of these condensed consolidated financial statements.

BRITESMILE, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
($ in thousands except share data)
Unaudited

	13 Weeks Ended September 27, 2003	13 Weeks Ended September 28, 2002	39 ... Sept
REVENUES:			
Center whitening fees, net	$ 4,616	$ 3,209	$
Associated Center whitening fees, net	5,387	5,818	
Product sales	1,434	919	
Total revenues, net	11,437	9,946	
OPERATING COSTS AND EXPENSES:			
Operating and occupancy costs	5,013	3,675	
Selling, general and administrative expenses	8,779	8,703	
Research and development expenses	403	425	
Depreciation and amortization	1,688	1,580	
Total operating costs and expenses	15,883	14,383	
Loss from operations	(4,446)	(4,437)	
Total interest expense, net	(331)	(148)	
Loss before income tax provision	(4,777)	(4,585)	
INCOME TAX PROVISION	-	18	
Net loss	$ (4,777)	$ (4,603)	$
BASIC AND DILUTED NET LOSS PER SHARE	(1.76)	$ (1.90)	$
WEIGHTED AVERAGE SHARES - BASIC AND DILUTED	2,718,547	2,428,464	

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

BRITESMILE, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
Unaudited
($ in thousands, except share data)

	39 Weeks Ended September 27, 2003	S
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net loss	$ (9,747)	$
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	4,883	
Increase in variable EVL deferred payments	1,721	
Changes in assets and liabilities and other	85	
Net cash used in operating activities	(3,058)	
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchase of property and equipment	(1,949)	
Purchase of intangibles	(1,750)	
Net cash used in investing activities	(3,699)	
CASH FLOWS FROM FINANCING ACTIVITIES:		
Net proceeds on line of credit	2,226	
Proceeds from debt financing	2,500	
Principal payments on long-term debt	(543)	
Payments on capital lease obligations	(516)	
Proceeds from issuance of preferred stock by subsidiary	1,000	
Proceeds from exercise of stock options	545	
Net cash provided by financing activities	5,212	
NET DECREASE IN CASH AND CASH EQUIVALENTS	(1,545)	
CASH AND CASH EQUIVALENTS AT BEGINNING OF THE PERIOD	3,527	
CASH AND CASH EQUIVALENTS AT END OF THE PERIOD	$ 1,982	$

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

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BRITESMILE, INC. AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)
September 27, 2003

1. Description of Business and Nature of Operations

BriteSmile, Inc., a Utah corporation ("BriteSmile" or the "Company"), and its affiliates develop and sell advanced teeth whitening products, services and technology. Unless specified to the contrary herein, references to BriteSmile or to the Company refer to the Company and its subsidiaries on a consolidated basis. The Company's operations include the development of technologically advanced teeth whitening processes that are distributed in professional salon settings known as BriteSmile Professional Teeth Whitening Centers ("Centers"). The Company also offers its products and technologies through arrangements with existing independent dental offices known as BriteSmile Professional Teeth Whitening Associated Centers ("Associated Centers"). As of September 27, 2003, the Company had 14 Centers and there were 4,943 Associated Centers in operation. Commencing September 25, 2003, the Company began offering some of its products to dentists who are not Associated Centers through a major dental products distribution company.

2. Basis of Presentation and Principles of Consolidation

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America for interim financial information and with the instructions in Form 10-Q and Article 10 of Regulations S-X. Accordingly, they do not include all of the information and footnotes required by accounting principles generally accepted in the United States for complete financial statements. In the opinion of management, all adjustments (consisting of normal recurring accruals) considered necessary for a fair presentation have been included. Operating results for the 13 weeks and 39 weeks ended September 27, 2003 are not necessarily indicative of the results that may be expected for the remainder of the fiscal year.

The accompanying condensed consolidated financial statements include the accounts of the Company, its subsidiaries, and entities (specifically including the Centers) in which the Company has a controlling interest. The Company consolidates the operating results of the Centers as the Company has a controlling financial interest in the Centers in accordance with the criteria of EITF 97-2, "Application of FASB Statement No. 94 and APB Opinion #16 to Physician Practice Management Entities ("PPM") and Certain Other Entities with Contractual Management Arrangements." The agreements with the Centers are 30 year, non-terminable agreements that provide the Company a financial interest in the PPM and exclusive authority over all decision making other than the dispensing of dental services.

Comprehensive Loss approximates net loss for all periods presented.

3. Stock Based Compensation

The Company uses the intrinsic value method to account for its stock based compensation plans. Had compensation cost for the Company's stock-based compensation plans been determined using fair value at the grant award dates using the Black-Scholes option pricing valuation model, the Company's reported net loss applicable to common shareholders and basic and diluted net loss per share would have been increased to the pro forma amounts indicated below (in thousands, except per share data):

	13 Weeks Ended September 27, 2003	13 Weeks Ended September 28, 2002	39 Weeks Ende September 27, 200
Net Loss as reported	$ 4,777	$ 4,603	$ 9,74
Add: Compensation expense reported under APB25	$ 0	$ 0	$
Deduct: Compensation expense computed using fair value method	$ 755	$ 793	$ 2,38
Pro forma net loss	$ 5,532	$ 5,396	$ 12,12
Pro forma basic and diluted net loss per share	$ (2.03)	$ (2.22)	$ (4.78

For further information, refer to the consolidated financial statements and footnotes thereto included in the Company's Annual Report on Form 10-K for the 52 weeks ended December 28, 2002.

4. Loss Per Common Share

Basic net loss per share is calculated as net loss divided by the weighted-average number of common shares outstanding, less shares subject to repurchase. Diluted net loss per share is computed by dividing net loss by the weighted-average number of common shares outstanding and dilutive common stock equivalents outstanding during the period. Common equivalent shares from stock options and warrants and convertible notes payable have been excluded from the calculation of net loss per share, as their effect is anti-dilutive.

5. Debt

Excimer Vision Leasing

During 2000 and 2001 the Company entered into an Agreement with Excimer Vision Leasing L.P. ("EVL"), a related party, to lease whitening devices for a period of 5 years. The lease was accounted for as a capital lease. The Company will pay EVL a monthly rental for each device consisting of a fixed amount (ranging from twenty dollars to thirty dollars) plus one hundred twenty-five dollars for each key card sold by the Company for that device. During 2002 and 2003, the Company and EVL amended their lease agreement to provide that the variable rent portion of the monthly rental payments due during 2002 and 2003, in the amount of twenty-five dollars for each BriteSmile procedure, will be deferred and paid to EVL on January 1, 2004, with interest payable on the deferred amount ($3.9 million at September 27, 2003) at a rate equal to LIBOR as quoted by The Bank of Nova Scotia for the applicable adjustment dates for deposits in U.S. Dollars for one month maturities, plus 200 basis points.

CAP America Trust Center Loan

On May 7, 2003, the Company and CAP America Trust entered into a Loan Agreement for $2.5 million to be used for capital expenditures and other specific revenue generating initiatives to be agreed and defined by BriteSmile and CAP America Trust. The Company began drawing on the line May 7, 2003 and may do so until May 10, 2006. Up to $1,700,000 of loan proceeds may be used for the specific revenue generating initiatives, and up to $800,000 for general working capital. Interest is fixed at 6%, payable monthly, with CAP America Trust having the right to reset the interest rate to 200bps over 1 year London Interbank Offered Rate ("LIBOR") after giving the Company 30 days notice. A variable fee payment based on the number of teeth whitening procedure performed at the Centers will commence on May 11, 2006, and continue until May 10, 2011. Variable fees will be payable 40 days after the end of the month in which the procedures are performed, except for fees due for April/May 2011, which will become payable on the maturity date. The Company drew down $1.6 million under this loan as of September 27, 2003.

LCO Investments Limited ("LCO") is the Company's major shareholder. LCO is a wholly owned subsidiary of the ERSE Trust. CAP Advisers Limited is a co-trustee of the ERSE Trust. Mr. Anthony Pilaro, a director and Chairman of the Company,

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is also Chairman of CAP Advisers Limited. CAP America Limited is a co-trustee of CAP America Trust, the lender under the Center Loan described above. CAP America Limited is owned and controlled by LCO.

In August 2003, a subsidiary of the Company issued $1.0 million of preferred stock. Interest is computed at the 1 year LIBOR rate plus 2% and adjusts annually on the anniversary date. Interest is payable annually. The preferred stock is not convertible and is redeemable in the event of certain circumstances. The Company has recorded this preferred stock as a liability.

During 2003, certain convertible debt holders converted $1.3 million of debt and accumulated interest into 218,293 shares of common stock.

6. Acquisition of Certain Human Oral Care Intellectual Property

Effective July 1, 2003, the Company and its wholly owned subsidiary, BriteSmile Development, Inc. ("BDI"), entered into an Asset Purchase Agreement (the "APA") with R. Eric Montgomery ("Montgomery") and certain entities owned and controlled by him (collectively, the "REM Group"). Montgomery is a member of the board of directors of the Company.

Pursuant to the APA, on July 23, 2003 BDI acquired intellectual property consisting primarily of certain United States and foreign patents, patent applications, continuations, continuations-in-part, trade secrets, technologies, know-how, trademarks and trade names relating to human oral care ("HOC") for a purchase price of $5.4 million ($6.4 million under certain conditions), plus a

50% participation interest in third party royalties and infringement recoveries relating to the HOC intellectual property acquired from the REM Group. In addition, the REM Group conveyed certain other HOC intellectual property, which is implicated by certain agreements between the Company, the REM Group and a third party to a new entity, Oraceutical Acquisition LLC ("OAC"), an entity owned and controlled by REM.

The purchase price consists of the following:

(i) $750,000 paid on May 9, 2003.

(ii) $1,000,000 paid on July 23, 2003, in connection with the closing of the APA;

(iii) 66,667 shares of Common Stock of the Company (the "Payment Shares") issued to Montgomery on July 25, 2003; and valued at $2,267,000 and

(iv) $1,352,000 payable to Oraceutical Innovative Properties ("OIP"), a REM Group member. For a period of up to 5 years, BDI will pay 5% of worldwide net revenues of the Company for a whitening crayon or pen product currently referred to as "BriteSmile to Go," and 1% of worldwide net revenues of the Company or its affiliates for light activated teeth whitening or other in-office or chair side whitening procedures, until the aggregate of such payments equals $1,352,000 At the end of the five year period any remaining amounts will be payable. The foregoing net revenue payments will be paid in cash, or at the option of BDI, up to 50% of any payment amount may be made in the form of Common Stock of the Company (the "Net Revenue Payment Shares"). All Net Revenue Payment Shares, if and when issued by the Company, will be issued at the then current market price as quoted on NASDAQ, and the balance in cash. The payments are due on a quarterly basis, 15 days after the close of the Company's applicable fiscal quarter.

BDI may be required to pay OIP an additional $1 million pursuant to the foregoing formula if REM Group fulfills certain contingencies, in which case the total purchase price to the REM Group will be $6 million.

Effective October 30, 2003, OAC entered into an agreement with a third party (the "OAC Licensee") which satisfied the conditions required to increase the purchase price due the REM Group under the APA by $1 million.

With respect to third party infringement and/or licensing activities, BDI will pay the REM Group 50% of such recoveries after payment of legal fees incurred in prosecution of third party claims, all patent prosecution and maintenance costs, and certain other amounts.

In connection with the APA, the Company recorded an intangible asset (primarily patents) of $5.4 million, which will be amortized on the straight-line method over 10 years. Amortization expense will be approximately $540,000 per year.

Financing Arrangements for the APA

Pursuant to a commitment agreement dated April 29, 2003, LCO loaned $1,000,000 to BDI on May 9, 2003 under the terms of a promissory note with interest and principal due on May 9, 2008. Interest accrues at 200 basis points above the 1-year LIBOR as quoted by the Bank of Nova Scotia (1.3075% at September 26, 2003). The interest rate on the note is reset every thirty days.

LCO loaned BDI an additional $1,000,000 on similar terms on July 23, 2003, the closing date of the APA.

The promissory notes issued to LCO by BDI were guaranteed by the Company.

In connection with the granting of the loans to BDI, LCO received warrants to purchase 133,333 shares of Common Stock of the Company. The warrants are exercisable at $15.00 per share and have a five year life. The shares of Common Stock underlying the warrants granted to LCO are subject to certain limited "piggyback" registration rights in the event of future registered public offerings of Common Stock sold by the Company. The fair value of the warrants issued of $1,704,378 was recorded as a discount of the notes, and is being amortized under the equity method over the life of the note, 5 years, to interest expense.

7. Legal Matters

BriteSmile, Inc. v. Discus Dental, Inc. and Salim Nathoo, filed in the United States District Court for the Northern District of California (the "Discus Patent Litigation"). The Company filed an initial complaint against Discus Dental, Inc. ("Discus"), Culver City, California, on July 8, 2002, asserting claims of infringement of the Company's U.S. Patents No. 6,343,933 and U.S. Patent No. 6,361,320. On February 28, 2003, the Company amended the Discus Patent Litigation by adding Salim Nathoo ("Nathoo") as a defendant. The complaint, as amended, further alleges misappropriation of the Company's trade secrets, civil conspiracy, and unfair competition and business practices by Discus and Nathoo; breach of contract and breach of fiduciary duty by Mr. Nathoo, and tortious interference with contract by Discus. The complaint alleges that Nathoo and Discus conspired to misappropriate BriteSmile's trade secrets in violation of Nathoo's contractual obligations to the Company. The amended lawsuit alleges that, as BriteSmile's Medical Director, Nathoo had and continues to have, an obligation to keep BriteSmile's trade secrets confidential. Beginning in 2001, Discus Dental and Nathoo entered into an agreement whereby Discus Dental paid Nathoo at least $2.5 million over a less than two year period for Nathoo's "consulting" services, which included paying Nathoo to share with Discus certain of the Company's trade secrets. The lawsuit alleges further that in December 2002, a third party informed BriteSmile of Nathoo's activities, and that when confronted by BriteSmile, Nathoo admitted to receiving $2.5 million from Discus. The Company seeks a permanent injunction against both Discus and Nathoo to prevent further infringement of its patents and improper disclosure of the Company's trade secrets, lost profits, treble damages and attorneys fees for willful patent infringement, punitive damages, and other relief.

On March 25, 2003, Discus filed its Answer to the Amended Complaint and Counterclaims. In its Answer, Discus denies any liability for BriteSmile's claims. Discus also raises affirmative defenses, including claims that its products and processes do not infringe BriteSmile's patents, and that BriteSmile's patents are invalid and unenforceable. Discus asserts counterclaims against BriteSmile, seeking (i) judicial declarations that BriteSmile's patents are invalid, unenforceable, and have not been infringed, (ii) tortious interference with prospective economic advantage and economic business relations, and (iii) unfair competition. Discus also asks for declarations that its products and processes do not violate BriteSmile's patents, that BriteSmile's patents are unenforceable, that BriteSmile has no protectable trade secrets, that BriteSmile's contracts with dentists which contain contractual restrictions on the purchase and use of competitive systems are unenforceable and should be enjoined, lost profits, treble damages and attorneys fees.

In July 2003, the case of Salim Nathoo v. BriteSmile Leasing (discussed below) was consolidated with the Discus Patent Litigation. All parties have produced documents and written discovery responses in support of their claims and defenses. Discovery is proceeding. The depositions of several key witnesses were taken from August through October 2003.

Salim Nathoo v. BriteSmile Leasing. On March 6, 2003, Nathoo filed a lawsuit against BriteSmile Leasing, a subsidiary of the Company in the New Jersey state court. In this action, Nathoo alleges that the Company breached its agreement to pay Nathoo money, and that such failure should result in the reversion of certain patent rights, which were previously assigned by Nathoo to the Company, back to Nathoo. Nathoo also seeks the payment of profits derived from the patent rights. The Company has filed an answer to the complaint, together with counterclaims alleging the same causes of action as in the Company's California litigation against Nathoo.

In May 2003, the court ordered that the case be transferred to California. In July 2003, the case was consolidated with the Discus Patent Litigation in California.

Smile Inc. Asia Pte. Ltd. v. BriteSmile. In April 2002, Smile Inc. Asia Pte. Ltd. ("Smile") sued the Company and BriteSmile Management, Inc., a wholly owned subsidiary of the Company, in the Third Judicial District Court in Salt Lake City, Utah. The Complaint alleges that BriteSmile Management breached its 1998 distributor agreement with Smile (exclusive as to Singapore and other surrounding countries) by failing to fill orders placed and to perform other obligations under the agreement. The Complaint also alleges that BriteSmile Management and the Company fraudulently induced Smile to enter into the distributor agreement, and includes claims for damages based on alleged unjust enrichment, civil conspiracy, breach of the duty of good faith and fair dealing, interference with contractual and economic relations, and fraudulent transfer.

In May 2002, the Company and BriteSmile Management filed their answer and counterclaim. The counterclaim alleges that Smile breached the distributor agreement by, among other things, failing to operate using a licensed dentist in good standing (the license of the principal of Smile, Dr. Tan, was revoked during 1999) and using BriteSmile's names and marks in a fashion not permitted by the distributor agreement.

The primary defense to Smile's claims is that the distributor agreement expressly excludes "non-laser-aided teeth whitening products and processes" sold by the Company. Accordingly, Smile has no rights to market and sell the Company's current light activated in-office whitening products and cannot claim damages for BriteSmile's marketing of its light activated system in the exclusive territory described in the distributor agreement.

Discovery is proceeding; both parties have produced documents and written responses in support of their claims and defenses.

BriteSmile v. Discus Dental, filed in Contra Costa County Superior Court, California. On May 31, 2002, the Company filed a complaint against Discus Dental, Inc. in Contra Costa County Superior Court, California, alleging causes of action for intentional interference with contractual relationship, negligent interference with contractual relationship, violation of Unfair Business Practice Act - Loss Leader, violation of Unfair Business Practice Act, trade libel and injunctive relief. The complaint alleges that Discus Dental and other defendants yet to be identified wrongfully interfered with the Company's contractual relationships with its Associated Center dentists, in part by writing letters with the purpose of inducing certain of the Company's Associated Dentists to terminate their contracts with the Company and switch to Discus' Zoom! system, and by making false and disparaging statements concerning the Company's teeth whitening system. The Complaint seeks damages for loss of business, punitive damages, injunctive relief, and costs of suit. This case was stayed in March 2003 and will remain stayed until January 2004.

Kalow & Springut v. BriteSmile et. al., filed in Supreme Court of the State of New York, County of New York. In April 2003, the law firm of Kalow & Springut ("KS") filed a complaint against the Company, BriteSmile International, a subsidiary of the Company, and A.M. Pilaro, the Company's Chairman. KS seeks to recover alleged unpaid legal fees and expenses in the amount of $767,818.18. Plaintiff also alleges that it was fraudulently induced to incur the legal fees and expenses, and seeks to recover punitive damages of at least $5 million.

On June 13, 2003, BriteSmile answered the Complaint and asserted counterclaims against KS for negligence, malpractice and breach of contract, including failure to return Company files, and failure to inform the Company that Dr. Salim Nathoo had been working for Discus Dental in violation of Nathoo's agreement with the Company.

Discovery proceedings have commenced. Motions have been filed to dismiss all claims alleged against Mr. Pilaro and all claims alleged against the Company, except for one breach of contract claim. The Company has also applied to the court to compel KS to produce documents and to turn over certain Company files

PracticeMasters, Inc. v. BriteSmile, Inc., filed in Superior Court in San Diego, California. On May 21, 2003, PracticeMasters, Inc. ("PMI") filed a complaint against the Company. PMI seeks compensatory damages in an unspecified amount for BriteSmile's alleged breach of a Marketing Associate Agreement with PMI. PMI alleges that BriteSmile failed to pay fees owed to PracticeMasters under the agreement and that it failed to provide proper notice of termination of the agreement. BriteSmile filed a demurrer and motion to strike on July 15, 2003. By the demurrer, BriteSmile seeks dismissal of PMI' causes of action for breach of fiduciary duty and constructive trust, which are the basis for its claim for punitive damages. By the motion to strike, BriteSmile seeks to strike PMI's claim for punitive damages. BriteSmile plans to file a cross-complaint against PMI for breach of the Marketing Associate Agreement and fraudulent misrepresentations and to seek compensatory damages arising from PracticeMasters failure to set up viable accounts and from resulting damage to BriteSmile's reputation.

No discovery has been taken.

The Proctor & Gamble Company vs. Orcaceutical LLC, IDEX Dental Sciences, Inc., Robert Eric Montgomery, BriteSmile, Inc. and BriteSmile Development, Inc. filed in the United States District Court for the Southern District of Ohio. In June 2003, The Proctor & Gamble Company ("P&G") filed a complaint against the defendants listed above alleging that Oraceutical LLC, IDEX Dental Sciences, Inc. and Robert Eric Montgomery (collectively, the "REM Group") had breached an agreement between the REM Group and P&G (the "Standstill Agreement") by entering into a binding memorandum of understanding (the "MOU") with BriteSmile, Inc. and BriteSmile Development, Inc. (collectively, the "Company") on May 9, 2003. R. Eric Montgomery ("Montgomery") is a director of the Company. Oraceutical LLC, which is owned by Montgomery, is a consultant to the Company. The complaint also seeks a declaratory judgment that US Patent Nos. 5,922,307, 6,331,292 and 6,488,914 (owned by the REM Group at the time the complaint was filed)(the

"Patents") are invalid and unenforceable and that P&G's Whitestrips product does not infringe the Patents. In its complaint P&G asserts that the REM Group was obligated under the Standstill Agreement not to take any action which would prevent it from granting rights to P&G under the Patents sufficient at least for P&G's current Whitestrips products. P&G further alleges that the REM Group breached that obligation by entering into the MOU and, accordingly, P&G terminated the Standstill Agreement. P&G does not seek monetary damages from the Company under the claims set forth in its complaint.

In Management's opinion, based upon advice of counsel, the litigation matters listed above in the aggregate will not have a material adverse effect on the Company.

8. Subsequent Events

Recent Note Conversions

On November 10, 2003, LCO Investments Limited exercised its right to convert a Promissory Note dated November 20, 2002 payable by the Company to LCO in the original principal amount of $2,500,000 (the "LCO Note") plus accrued interest, into shares of common stock of the Company. The conversion price of the LCO Note was $6.00 per share, equal to the fair market value of the common stock of the Company on the date the LCO Note was issued. Upon conversion of the LCO Note, the Company issued to LCO 424,907 shares of common stock of the Company. LCO is the Company's major shareholder and is identified under Note 5, "CAP America Trust Center Loan," above.

On November 12, 2003, Brad Peters exercised his right to convert a Promissory Note dated November 20, 2002 payable by the Company to Mr. Peters in the original principal amount of $1,000,000 (the "Peters Note") plus accrued interest, into shares of common stock of the Company. The conversion price of the Peters Note was $6.00 per share, equal to the fair market value of the common stock of the Company on the date the Peters Note was issued. Upon conversion of the Peters Note, the Company issued to Mr. Peters 169,991 shares of common stock of the Company. Mr. Peters is a member of the Board of Directors of the Company.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Forward-looking Statements and Risk Factors

The following Management's Discussion and Analysis of Financial Condition and Results of Operations contains forward-looking statements that involve risks and uncertainties. Such forward-looking statements may be deemed to include information that is not historical. The statements contained in this Report that are not purely historical are "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995 and Section 21E of the Securities Exchange Act. These statements relate to the Company's expectations, hopes, beliefs, anticipations, commitments, intentions and strategies regarding the future. They may be identified by the use of words or phrases such as "believes," "expects," "anticipates," "should," "plans," "estimates," and

"potential," among others. Forward-looking statements include, but are not limited to, statements contained in Management's Discussion and Analysis of Financial Condition and Results of Operations regarding the Company's financial performance, revenue and expense levels in the future, and the sufficiency of its existing assets to fund future operations and capital spending needs. Actual results could differ materially from the anticipated results or other expectations expressed in such forward-looking statements. The Company believes that many of the risks set forth here and in the Company's 10-K Annual Reports filed with the SEC are inherent to doing business in the industry in which the Company operates, and will likely be present in all periods reported. The forward-looking statements contained in this Report are made as of the date of this Report and the Company assumes no obligation to update them or to update the reasons why actual results could differ from those projected in such forward-looking statements. Among others, risks and uncertainties that may affect the business, financial condition, performance, development, and results of operations of the Company include:

- Government regulation of the Company's products and teeth whitening procedures, including: (i) current restrictions or controls on the practice of dentistry by general business corporations, and (ii) future, unknown enactments or interpretations of current regulations which could, in the future, affect the Company's operational structure and relationships with licensed dentists;

- Failure of the Company to generate, sustain or manage growth, including failure to develop new products and expand Center and Associated Center locations and revenues;

- The loss of product market share to competitors and/or development of new or superior technologies by competitors;

- Ongoing operating losses associated with the development, marketing and implementation of new, light-activated teeth whitening technologies and other teeth whitening products;

- Failure of the Company to secure additional financing to complete its plan for the rollout of a broad base of Associated Centers and for the introduction of additional retail whitening products;

- Unproven market for the Company's new whitening products, including "BriteSmile To Go", whitening process, and "Whitening Center" and "Associated Center" concepts, in light of competition from traditional take-home whitening products and bleaching tray methods and newly introduced in-office bleaching methods;

- Failure to develop marketing strategies and delivery methods to penetrate non-U.S. markets; and

- Lack of product diversity.

Critical Accounting Policies and Estimates

General

The Company's discussion and analysis of its financial condition and results of operations are based upon the Company's condensed consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires the Company to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities. On an on-going basis, the Company evaluates its estimates, including those related to customer programs and incentives, bad debts, inventories, taxes, warranty obligations, financing operations, restructuring, and contingencies and litigation. The Company bases its estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

The Company believes the following critical accounting policies affect its more significant judgments and estimates used in the preparation of its condensed consolidated financial statements.

Revenue Recognition

BriteSmile recognizes revenue related to retail products at the time such products are shipped to customers.

BriteSmile recognizes revenue at Centers at the time a whitening procedure is performed.

BriteSmile records deferred revenue at the time of sale of key cards and access codes to Associated Centers. Revenue is subsequently recognized over the period that the whitening procedures (which can be performed utilizing the key cards and access codes) are performed, currently estimated at 19 days from the date of shipment for Domestic Associated Centers and 13 days for International Associated Centers. A material change to the estimated time period over which the key cards and access codes are used could have a significant impact on BriteSmile's revenue in the period of change as well as future periods.

BriteSmile's policy is not to accept any return of key cards or access codes during the course of the agreement with an Associated Center.

Bad Debts

BriteSmile maintains allowances for doubtful accounts for estimated losses resulting from the inability of its customers to make required payments. A considerable amount of judgment is required in assessing the ultimate realization of accounts receivable including the current credit-worthiness of each customer. If the financial condition of BriteSmile's customers (dentists who operate Associated Centers) were to deteriorate, resulting in an impairment of their ability to make payments, additional allowances may be required.

Inventory

Inventories are stated at the lower of cost or market. BriteSmile writes down its inventory for estimated obsolescence or unmarketable inventory equal to the difference between the cost of inventory and the estimated market value based upon assumptions about future demand and market conditions, as well as for damaged goods. If actual market conditions are less favorable than those projected by management, additional inventory write-downs may be required.

Property and Equipment

BriteSmile evaluates its property, equipment and improvements for impairment whenever indicators of impairment exist. An impairment charge of $293,000 was recorded during the 39 weeks ended September 27, 2003 related to the relocation of the Company's Houston Center to a new strategic location.

Store Closures

BriteSmile recorded significant reserves in connection with store closures made in prior years. These reserves include estimates pertaining to employee separation costs and the settlements of contractual obligations, primarily property leases. The remaining liability relates only to lease obligations. Although the Company does not anticipate significant changes, the actual costs related to the closures may differ from these estimates. During the thirty-nine weeks ended September 27, 2003, the Company paid $176,000 related to these leases. Additionally, during the thirty-nine weeks ended September 27, 2003, the Company revised its estimated liability by $140,000 related to two leases as the sub-lessees stopped making payments.

Legal Contingencies

BriteSmile is currently a party to certain legal actions. Management does not believe that current pending litigation will have a material adverse effect on BriteSmile's condensed consolidated financial statement position taken as a whole. This conclusion has been developed in consultation with outside counsel handling BriteSmile's defenses in the matters. It is possible, however, that future results of operations for any particular quarterly or annual period could be materially affected by changes in management's assumptions and the effectiveness of BriteSmile's strategies related to these legal actions.

BriteSmile recognizes the costs of legal services in the periods incurred.

Overview

Operating and occupancy costs are composed primarily of three main groups: 1) the cost of goods for both the Center and Associated Center whitening procedure kits and retail products; 2) the financing costs for the devices in the Associated Centers; and 3) the operating and occupancy costs for the Centers.

Selling, general and administrative expenses are composed of expenses associated with all corporate and administrative functions that support existing operations and provide an infrastructure to support future growth, including management and staff salaries, employee benefits, travel, information systems, operating costs of the Call Center, training, field support, and marketing and advertising.

The following discussion should be read in conjunction with the Financial Statements and the Notes thereto included in Item 1 of this Quarterly Report on Form 10-Q and in the Company's Annual Report on Form 10-K for the fiscal year ended December 28, 2002.

The following table sets forth unaudited operating results for the thirteen week periods and 39 week periods ended September 27, 2003 and September 28, 2002, as a percentage of sales in each of these periods. This data has been derived from the unaudited financial statements.

	13 Weeks ended September 27, 2003	13 Weeks ended September 28, 2002	39 Weeks ended September 27, 2003	39 S
Income Statement Data:				
Revenues:				
Center whitening fees, net	40.4%	32.3%	38.2%	
Associated Center whitening fees, net	47.1%	58.5%	50.8%	
Product sales	12.5%	9.2%	11.0%	
Total revenues, net	100.0%	100.0%	100.0%	
Operating Costs and Expenses:				
Operating and occupancy costs	43.8%	36.9%	40.9%	
Selling, general and administrative expenses	76.8%	87.5%	70.0%	
Research and development expenses	3.5%	4.3%	2.5%	
Depreciation and amortization	14.8%	15.9%	15.5%	
Total operating costs and expenses	138.9%	144.6%	128.9%	
Loss from operations	(38.9)%	(44.6)%	(28.9)%	
Interest expense, net	(2.9)%	(1.5)%	(2.1)%	
Loss before income tax provision	(41.8)%	(46.1)%	(31.0)%	
Provision for income taxes	0.0%	0.2%	0.0%	
Net Loss	(41.8)%	(46.3)%	(31.0)%	

The following are explanations of significant period-to-period changes for the 13 weeks ended September 27, 2003 compared to September 28, 2002:

Revenues

Total Revenues, net. Total revenues increased by $1.5 million, or 15.0% to $11.4 million for the 13 weeks ended September 27, 2003 compared to $9.9 million for the 13 weeks ended September 28, 2002.

Center Whitening Fees, net. Center whitening fees increased by $1.4 million, or 43.9%, to $4.6 million for the 13 weeks ended September 27, 2003, from $3.2 million for the 13 weeks ended September 28, 2002. The number of procedures performed in the Centers increased by 45.2% to 10,361 in the third quarter of 2003, compared to 7,136 in the same quarter of 2002.

Associated Center Whitening Fees. Associated Center whitening fees decreased by $431,000, or 7.4%, to $5.4 million for the 13 weeks ended September 27, 2003, from $5.8 million for the 13 weeks ended September 28, 2002. This decrease was due to increased discounting of procedures in the 13 weeks ended September 27, 2003 compared to the 13 weeks ended September 28, 2002. The number of procedures sold in the Associated Centers increased 11.1% to 33,270 procedures in the third quarter of 2003 compared to 29,940 procedures in the same quarter of 2002. Domestic Associated Center whitening procedures were 23,165 in the 13 weeks ended September 27, 2003 compared to 23,345 in the same quarter of 2002. International Associated Center whitening procedures were 10,105 in the 13 weeks ended September 27, 2003 compared to 6,595 in the same quarter of 2002. While the Company continues to execute its strategy of expanding distribution both domestically and internationally through the dental practice channel (Associated Centers), the Company has taken efforts domestically to terminate and replace dental practices that are not assisting the Company in achieving its plans. As a result, the number of domestic Associated Centers has decreased from 3,362 at September 28, 2002 to 3,192 at September 27, 2003.

Product Sales. Product sales increased by $515,000 or 56.0% to $1.4 million for the 13 weeks ended September 27, 2003, from $919,000 for the 13 weeks ended September 28, 2002. Product sales represent the Company's traditional retail products (toothpaste, mouthwash, whitening gum, and the Sonicare toothbrush products sold at Centers and Associated Centers), and the Company's two new product offerings (Magic Mirror and BriteSmile To Go), which were launched in September 2003. These new offerings accounted for $324,000 or 22.6% of total product sales for the 13 weeks ended September 27, 2003.

Operating Costs and Expenses

Operating and Occupancy Costs. Operating costs includes costs of goods sold, lease financing costs for the Associated Centers, and the operating and occupancy costs for the Centers. Operating and occupancy costs were $5.0 million or 43.8% as a percentage of revenues for the 13 weeks ended September 27, 2003, compared to $3.7 million or 36.9% as a percentage of revenues in the 13 weeks ended September 28, 2002. This increase was higher due to increased revenues and the costs associated with the new Magic Mirror and BriteSmile To Go products. Operating expenses for the 13 weeks ended also included an inventory adjustment of $343,000 that relates to periods prior to 2003. Management does not believe this adjustment has a material effect on any period.

Selling, General and Administrative Expenses. Selling, general and administrative expenses remained relatively flat at $8.8 million or 76.8% as a percentage of revenue for the third quarter of 2003, compared to $8.7 million or 87.5% in the corresponding period in 2002.

Research and Development Expenses. Research and development expenses decreased to $403,000 or 3.5% as a percentage of revenue for the thirteen weeks ended September 27, 2003 compared to $425,000 or 4.3% as a percentage of revenue in the corresponding period in 2002. The expenses incurred in 2003 related primarily to product development, whereas the expenses in 2002 were a mixture of product development and product efficacy studies.

Depreciation and Amortization. Depreciation and amortization was $1.7 million or 14.8% as a percentage of revenue for the third quarter of 2003 compared to $1.6 million or 15.9% as a percentage of revenue in the corresponding period in 2002. The increase is due to $101,000 in amortization expense in connection with the intellectual property acquired in July 2003.

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Interest Expense, net. Interest expense, net increased to $331,000 or 2.9% as a percentage of revenue for the third quarter of 2003 compared to interest expense, net of $148,000 or 1.5% as a percentage of revenue in the corresponding quarter of 2002. The increase is due to increased levels of borrowing in connection with new business initiatives.

The following are explanations of significant period-to-period changes for the 39 weeks ended September 27, 2003 and September 28, 2002:

Revenues

Total Revenues. Total revenues increased by $1.1 million, or 3.6%, to $31.4 million for the 39 weeks ended September 27, 2003, from $30.3 million for the 39 weeks ended September 28, 2002.

Center Whitening Fees. Center whitening fees increased by $2.2 million, or 22.0%, to $12.0 million for the 39 weeks ended September 27, 2003, from $9.8 million for the 39 weeks ended September 28, 2002. The number of procedures performed in the Centers increased by 18.5% to 25,947 for the 39 weeks ended September 27, 2003, compared to 21,905 for the same period of 2002.

Associated Center Whitening Fees. Associated Center whitening fees decreased by $1.3 million, or 7.8%, to $15.9 million for the 39 weeks ended September 27, 2003, from $17.3 million for the 39 weeks ended September 28, 2002. The primarily reason for this decline was an increase in discounting year-over-year. There were 4,943 Associated Centers at the end of the 39 weeks ended September 27, 2003 compared to 4,568 Associated Centers at the end of the 39 weeks ended September 28, 2002. The number of procedures sold in the Associated Centers decreased slightly (0.95%) to 96,075 procedures in the 39 weeks ended September 27, 2003 compared to 97,000 procedures in the same period of 2002. Domestic Associated Center whitening procedures totaled 70,585 in the 39 weeks ended September 27, 2003 compared to 78,010 in the same period of 2002. International Associated Center whitening procedures were 25,490 in the 39 weeks ended September 27, 2003 compared to 18,990 in the same period of 2002. While the Company continues to execute its strategy of expanding distribution both domestically and internationally through the dental practice channel (Associated Centers), the Company has taken efforts domestically to terminate and replace dental practices that are not assisting the Company in achieving its plans. As a result, the number of domestic Associated Centers has decreased from 3,362 at September 28, 2002 to 3,192 at September 27, 2003.

Product Sales. Product sales increased by $288,000 to $3.5 million for the 39 weeks ended September 27, 2003, from $3.2 million for the 39 weeks ended September 28, 2002. Product sales represent the Company's toothpaste, mouthwash, whitening gum, and the Sonicare toothbrush products sold at Centers and Associated Centers, as well as the Company's new products - Magic Mirror and BriteSmile To Go. This increase in product sales is attributable primarily to the launch of the Company's two new products in September 2003.

Operating Costs and Expenses

Operating and Occupancy Costs. Operating costs includes costs of goods sold, lease financing costs for the Associated Centers, and the operating and occupancy costs for the Centers. Operating and occupancy costs were $12.8 million or 40.9% as a percentage of revenues for the 39 weeks ended September 27, 2003, compared to $11.2 million or 37.0% as a percentage of revenue in the 39 weeks ended September 28, 2002. This increase was primarily due to increased revenues and the launch of two new products - Magic Mirror and BriteSmile To Go. Operating expenses for the 39 weeks ended September 27, 2003 also includes an adjustment to cost of goods sold of $343,000 that relates to periods prior to 2003. Management does not believe this adjustment has a material effect on any period.

Selling, General and Administrative Expenses. Selling, general and administrative expenses decreased to $22.0 million or 70.0% as a percentage of revenue for the 39 weeks ended September 27, 2003 compared to $24.8 million or 82.0% as a percentage of revenue in the corresponding period in 2002. The $2.9 million decrease is due to lower advertising costs, reflecting the Company's continued commitment to improve its marketing efficiency.

Research and Development Expenses. Research and development expenses of $772,000 were 2.5% as a percentage of revenue for the 39 weeks ended September 27, 2003 compared to $717,000 or 2.4% as a percentage of revenue in the corresponding period in 2002. This expense is primarily related to development of new products to expand our leadership position in the teeth-whitening industry.

Depreciation and Amortization. Depreciation and amortization increased to $4.9 million or 15.6% as a percentage of revenue for the 39 weeks ended September 27, 2003 compared to $4.6 million or 15.1% as a percentage of revenue in the corresponding period in 2002. This increase, for 39 weeks ended September 27, 2003, is the result of a greater number of light activated whitening devices in operation internationally and $101,000 in amortization expense in connection with the intellectual property acquired on July 23, 2003.

Interest Expense, net. Interest expense, net increased to $670,000 or 2.1% as a percentage of revenue for the 39 weeks ended September 27, 2003 compared to interest expense, net of $618,000 or 2.0% as a percentage of revenue in the corresponding period of 2002.

Liquidity and Capital Resources

To date, the Company has yet to achieve profitability. The Company does not expect to be profitable in 2003. The Company has implemented initiatives to increase sales and decrease expenses to assure its viability for the next 12 months. The Company's principal sources of liquidity have been proceeds from issuance of common stock and debt. At September 27, 2003, the Company had $2.0 million in cash and borrowing capacity under lines of credit totaling $1.7 million.

The Company obtained the following additional borrowing availability during 2003:

- $1.5 million increase, effective January 2003, in the Credit Agreements with CAP Advisers. The increase is specifically for international capital expenditures.
    - The Company has drawn $0.9 million under this credit facility, leaving $0.6 million currently available.
- $2.5 million Center Loan with CAP America Trust. This credit facility is for general working capital needs ($800,000) and capital expenditures and specific revenue generating initiatives ($1.7 million).
    - The Company has drawn $1.3 million under the Center Loan.
    - On October 2, 2003, the Company drew down an additional $0.3 million, leaving $0.9 million currently available under this line.

The Company believes that cash on hand along with available borrowing capacity discussed above will be sufficient to sustain operations for the next twelve months.

In addition to the line of credit facilities, the Company entered into a financing agreement with LCO Investment Limited, as follows:

Pursuant to a commitment agreement dated April 29, 2003, LCO loaned $1,000,000 to BDI on May 9, 2003 under the terms of a promissory note, with interest and principal due on May 9, 2008. Interest accrues at 200 basis points above the 1 year LIBOR as quoted by the Bank of Nova Scotia. The interest rate on the note is reset every thirty days.

LCO loaned BDI an additional $1,000,000 on similar terms on July 23, 2003, the closing date of the APA.

The promissory notes issued to LCO by BDI were guaranteed by the Company.

In connection with the granting of the loans to BDI, LCO received warrants to purchase 133,333 shares of Common Stock of the Company. The warrants are exercisable at $15.00 per share and have a five year life. The shares of Common Stock underlying the warrants granted to LCO are subject to certain limited "piggyback" registration rights in the event of future registered public offerings of Common Stock sold by the Company. The fair value of the warrants issued of $1,704,378 was recorded as a discount of the note, and is being amortized over the life of the note, 5 years, to interest expense.

Cash flows used in operations decreased by $3.4 million to ($3.1 million) for the 39 weeks ended September 27, 2003 from ($6.5 million) during the third quarter of 2002, primarily due to the decrease in the net loss.

Cash provided by financing activities was $5.2 million for the 39 weeks ended September 27, 2003, compared to $ 2.9 million for the same period in 2002. During the second and third quarters of 2003, the Company received $2 million

financing from LCO for BDI in connection with its acquisition of human oral care intellectual property.

Capital expenditures were $1.9 million for the 39 weeks ended September 27, 2003, compared to $2.8 million for the same period in 2002. In 2002, capital expenditures related primarily to the purchase of light activated whitening devices. For the 39 weeks ended September 27, 2003, capital expenditures represented either the purchase of new light activated devices or the conversion of old devices for use in the Company's international markets, and the launch of new Company initiatives. In July 2003, the Company acquired intellectual property of $5.4 million and paid cash of $1,750,000.

Inflation

In general, the Company does not believe that inflation has had a material effect on its results of operations in recent years. However, there can be no assurance that the Company's business will not be affected by inflation in the future.

Seasonality

Although the Company does not believe that its business follows seasonal trends, it has recognized that at various times during the months of July and August and again during December and January, a substantial number of Associated Centers (both domestic and international) shut down for vacation. As a result, the frequency of key card purchases by Associated Centers during these months declines as well. Additionally, the Company's Centers have recognized some seasonality during the same months because of customer vacations.

ITEM 3. QUALITATIVE AND QUANTITATIVE DISCLOSURE ABOUT MARKET RISK

We believe there has been no material change in our exposure to Market Risk from that discussed in our 2002 Annual Report on Form 10-K

ITEM 4. CONTROLS AND PROCEDURES

During the 13 week period ended September 27, 2003, the Company identified an error in the recording of cost of sales. This error resulted in the Company restating their financial statements for the 13 week period ended June 28, 2003. The errors were the result of weaknesses in the Company's internal control structure. Deloitte & Touche LLP has communicated to management and the Audit Committee that these weaknesses are considered material weaknesses. Management and the Audit Committee have identified certain changes that they feel are necessary to strengthen the Company's accounting and reporting function, including capabilities of its accounting personnel and adoption of more frequent reviews and reconciliations of financial information.

Within 90 days prior to the date of this report, the Company's Chief Executive Officer and Chief Financial Officer have evaluated the effectiveness of the Company's disclosure controls and procedures. Based on upon their evaluation and as a result, in part, of the matters noted in the preceding paragraph, the Company's Chief Executive Officer and Chief Financial Officer have concluded that the Company's disclosure controls and procedures (as defined in Rules 13a-14(c) and 15d-14(c) under the Securities Exchange Act of 1934, as amended), are effective, with the following qualifications:

1. The error discussed above was just recently identified and corrected and management has not had sufficient time to (i) fully assess their remediation plan and (ii) to fully implement appropriate changes.

2. The inventory accounting systems require additional review and enhancement to ensure that inventory costing is reasonable and accurate, and applies costing principles that are consistent with U.S. GAAP on a recurring basis.

3. Accounting policies and procedures must be formally documented.

4. Unusual and complex transactions require the involvement of accounting personnel on a timely basis.

Since the date of their evaluation, there have been no significant changes to the Company's internal controls or other factors that could significantly affect these controls.

Management has directed that the foregoing corrective procedures and accounting system enhancements be designed and fully implemented.

PART II - OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

BriteSmile, Inc. v. Discus Dental, Inc. and Salim Nathoo, filed in the United States District Court for the Northern District of California (the "Discus Patent Litigation"). The Company filed an initial complaint against Discus Dental, Inc. ("Discus"), Culver City, California, on July 8, 2002, asserting claims of infringement of the Company's U.S. Patents No. 6,343,933 and U.S. Patent No. 6,361,320. On February 28, 2003, the Company amended the Discus Patent Litigation by adding Salim Nathoo ("Nathoo") as a defendant. The complaint, as amended, further alleges misappropriation of the Company's trade secrets, civil conspiracy, and unfair competition and business practices by Discus and Nathoo; breach of contract and breach of fiduciary duty by Mr. Nathoo, and tortious interference with contract by Discus. The complaint alleges that Nathoo and Discus conspired to misappropriate BriteSmile's trade secrets in violation of Nathoo's contractual obligations to the Company. The amended lawsuit alleges that, as BriteSmile's Medical Director, Nathoo had and continues to have, an obligation to keep BriteSmile's trade secrets confidential. Beginning in 2001, Discus Dental and Nathoo entered into an agreement whereby Discus Dental paid Nathoo at least $2.5 million over a less than two year period for Nathoo's "consulting" services, which included paying Nathoo to share with Discus certain of the Company's trade secrets. The lawsuit alleges further that in December 2002, a third party informed BriteSmile of Nathoo's activities, and that when confronted by BriteSmile, Nathoo admitted to receiving $2.5 million from Discus. The Company seeks a permanent injunction against both Discus and Nathoo to prevent further infringement of its patents and improper disclosure of the Company's trade secrets, lost profits, treble damages and attorneys fees for willful patent infringement, punitive damages, and other relief.

On March 25, 2003, Discus filed its Answer to the Amended Complaint and Counterclaims. In its Answer, Discus denies any liability for BriteSmile's claims. Discus also raises affirmative defenses, including claims that its products and processes do not infringe BriteSmile's patents, and that BriteSmile's patents are invalid and unenforceable. Discus asserts counterclaims against BriteSmile, seeking (i) judicial declarations that BriteSmile's patents are invalid, unenforceable, and have not been infringed, (ii) tortious interference with prospective economic advantage and economic business relations, and (iii) unfair competition. Discus also asks for declarations that its products and processes do not violate BriteSmile's patents, that BriteSmile's patents are unenforceable, that BriteSmile has no protectable trade secrets, that BriteSmile's contracts with dentists which contain contractual restrictions on the purchase and use of competitive systems are unenforceable and should be enjoined, lost profits, treble damages and attorneys fees.

In July 2003, the case of Salim Nathoo v. BriteSmile Leasing (discussed below) was consolidated with the Discus Patent Litigation. All parties have produced documents and written discovery responses in support of their claims and defenses. Discovery is proceeding. The depositions of several key witnesses were taken from August through October 2003.

Salim Nathoo v. BriteSmile Leasing. On March 6, 2003, Nathoo filed a lawsuit against BriteSmile Leasing, a subsidiary of the Company in the New Jersey state court. In this action, Nathoo alleges that the Company breached its agreement to pay Nathoo money, and that such failure should result in the reversion of certain patent rights, which were previously assigned by Nathoo to the Company, back to Nathoo. Nathoo also seeks the payment of profits derived from the patent rights. The Company has filed an answer to the complaint, together with counterclaims alleging the same causes of action as in the Company's California litigation against Nathoo.

In May 2003, the court ordered that the case be transferred to California. In July 2003, the case was consolidated with the Discus Patent Litigation in California.

Smile Inc. Asia Pte. Ltd. v. BriteSmile. In April 2002, Smile Inc. Asia Pte. Ltd. ("Smile") sued the Company and BriteSmile Management, Inc., a wholly owned subsidiary of the Company, in the Third Judicial District Court in Salt Lake City, Utah. The Complaint alleges that BriteSmile Management breached its 1998 distributor agreement with Smile (exclusive as to Singapore and other surrounding countries) by failing to fill orders placed and to perform other obligations under the agreement. The Complaint also alleges that BriteSmile Management and the Company fraudulently induced Smile to enter into the distributor agreement, and includes claims for damages based on alleged unjust

enrichment, civil conspiracy, breach of the duty of good faith and fair dealing, interference with contractual and economic relations, and fraudulent transfer.

In May 2002, the Company and BriteSmile Management filed their answer and counterclaim. The counterclaim alleges that Smile breached the distributor agreement by, among other things, failing to operate using a licensed dentist in good standing (the license of the principal of Smile, Dr. Tan, was revoked during 1999) and using BriteSmile's names and marks in a fashion not permitted by the distributor agreement.

The primary defense to Smile's claims is that the distributor agreement expressly excludes "non-laser-aided teeth whitening products and processes" sold by the Company. Accordingly, Smile has no rights to market and sell the Company's current light activated in-office whitening products and cannot claim damages for BriteSmile's marketing of its light activated system in the exclusive territory described in the distributor agreement.

Discovery is proceeding; both parties have produced documents and written responses in support of their claims and defenses.

BriteSmile v. Discus Dental, filed in Contra Costa County Superior Court, California. On May 31, 2002, the Company filed a complaint against Discus Dental, Inc. in Contra Costa County Superior Court, California, alleging causes of action for intentional interference with contractual relationship, negligent interference with contractual relationship, violation of Unfair Business Practice Act - Loss Leader, violation of Unfair Business Practice Act, trade libel and injunctive relief. The complaint alleges that Discus Dental and other defendants yet to be identified wrongfully interfered with the Company's contractual relationships with its Associated Center dentists, in part by writing letters with the purpose of inducing certain of the Company's Associated Dentists to terminate their contracts with the Company and switch to Discus' Zoom! system, and by making false and disparaging statements concerning the Company's teeth whitening system. The Complaint seeks damages for loss of business, punitive damages, injunctive relief, and costs of suit. This case was stayed in March 2003 and will remain stayed until January 2004.

Kalow & Springut v. BriteSmile et. al., filed in Supreme Court of the State of New York, County of New York. In April 2003, the law firm of Kalow & Springut ("KS") filed a complaint against the Company, BriteSmile International, a subsidiary of the Company, and A.M. Pilaro, the Company's Chairman. KS seeks to recover alleged unpaid legal fees and expenses in the amount of $767,818.18. Plaintiff also alleges that it was fraudulently induced to incur the legal fees and expenses, and seeks to recover punitive damages of at least $5 million.

On June 13, 2003, BriteSmile answered the Complaint and asserted counterclaims against KS for negligence, malpractice and breach of contract, including failure to return Company files, and failure to inform the Company that Dr. Salim Nathoo had been working for Discus Dental in violation of Nathoo's agreement with the

Company.

Discovery proceedings have commenced. Motions have been filed to dismiss all claims alleged against Mr. Pilaro and all claims alleged against the Company, except for one breach of contract claim. The Company has also applied to the court to compel KS to produce documents and to turn over certain Company files

PracticeMasters, Inc. v. BriteSmile, Inc., filed in Superior Court in San Diego, California. On May 21, 2003, PracticeMasters, Inc. ("PMI") filed a complaint against the Company. PMI seeks compensatory damages in an unspecified amount for BriteSmile's alleged breach of a Marketing Associate Agreement with PMI. PMI alleges that BriteSmile failed to pay fees owed to PracticeMasters under the agreement and that it failed to provide proper notice of termination of the agreement. After BriteSmile filed a demurrer and motion to strike on July 15, 2003, PMI subsequently amended its complaint to dismiss its causes of action for breach of fiduciary duty and constructive trust, which are the basis for punitive damages. On October 17, 2003, BriteSmile filed a cross-complaint against PMI for breach of the Marketing Associate Agreement and fraudulent misrepresentations and to seek compensatory damages arising from PracticeMasters failure to set up viable accounts and from resulting damage to BriteSmile's reputation. A trial date has been set for April 30th, 2004.

No discovery has been taken.

In Management's opinion, based upon advice of counsel, the litigation matters listed above in the aggregate will not have a material adverse effect on the Company.

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The Proctor & Gamble Company vs. Orcaceutical LLC, IDEX Dental Sciences, Inc., Robert Eric Montgomery, BriteSmile, Inc. and BriteSmile Development, Inc. filed in the United States District Court for the Southern District of Ohio. In June 2003, The Proctor & Gamble Company ("P&G") filed a complaint against the defendants listed above alleging that Oraceutical LLC, IDEX Dental Sciences, Inc. and Robert Eric Montgomery (collectively, the "REM Group") had breached an agreement between the REM Group and P&G (the "Standstill Agreement") by entering into a binding memorandum of understanding (the "MOU") with BriteSmile, Inc. and BriteSmile Development, Inc. (collectively, the "Company") on May 9, 2003. R. Eric Montgomery ("Montgomery") is a director of the Company. Oraceutical LLC, which is owned by Montgomery, is a consultant to the Company. The complaint also seeks a declaratory judgment that US Patent Nos. 5,922,307, 6,331,292 and 6,488,914 (owned by the REM Group at the time the complaint was filed)(the "Patents") are invalid and unenforceable and that P&G's Whitestrips product does not infringe the Patents. In its complaint P&G asserts that the REM Group was obligated under the Standstill Agreement not to take any action which would prevent it from granting rights to P&G under the Patents sufficient at least for P&G's current Whitestrips products. P&G further alleges that the REM Group breached that obligation by entering into the MOU and, accordingly, P&G terminated the Standstill Agreement. P&G does not seek monetary damages from the Company under the claims set forth in its complaint.

ITEM 2. CHANGES IN SECURITIES

During the period June 28, 2003 to September 27, 2003, the Company granted to key employees under its 1997 Plan non-qualified options to purchase an aggregate of 82,167 shares of the Company's common stock, at exercise prices ranging from

$27.46 to $27.85 per share. The options vest over a period of time following their respective dates of grant.

Effective July 1, 2003, the Company and its wholly owned subsidiary, BriteSmile Development, Inc. ("BDI"), entered into an Asset Purchase Agreement (the "APA") with R. Eric Montgomery ("Montgomery") and certain entities owned and controlled by him (collectively, the "REM Group"). Montgomery is a member of the board of directors of the Company.

Pursuant to the APA, BDI acquired certain United States and foreign patents, patent applications, continuations, continuations-in-part, trade secrets, technologies, know-how, trademarks and trade names relating to human oral care ("HOC") for a purchase price of $5.4 million ($6.4 million under certain contingencies), plus a 50% participation interest in third party royalties and infringement recoveries relating to the HOC intellectual property acquired from the REM Group. A portion of the purchase price was paid in the form of 66,667 shares of Common Stock of the Company issued to Montgomery on July 25, 2003.

In connection with the granting of loans by LCO to BDI to finance a portion of the payments required under the APA, LCO received warrants to purchase 133,333 shares of Common Stock of the Company. All warrants granted to LCO are exercisable at $15.00 per share and have a five-year life. Warrants to purchase 66,666 shares of the 133,333 total were issued on May 9, 2003. The remaining 66,667 warrants were granted to LCO on July 23, 2003 in connection with the closing of the APA transaction.

The shares of Common Stock underlying the warrants granted to LCO, and the shares of Common Stock issued to Montgomery on July 25, 2003 in connection with closing of the APA, are subject to certain limited "piggyback" registration rights in the event of future registered public offerings of Common Stock sold by the Company.

All issuances and sales of the Company's Common Stock in connection with the closing of the APA, and the grant of warrants to LCO as described above, were made in private transactions, exempt from the registration requirements of the Securities Act of 1933 pursuant to Section 4(2) of the Act and Rule 506 promulgated by the Securities and Exchange Commission there under. Each person acquired the shares for investment purposes only, with no present intent to distribute the securities. The certificates representing the shares issued were subject to standard restrictive legends with respect to transfer or resale. All recipients received or had meaningful access to all Company reports filed with the Commission pursuant to the Securities Exchange Act of 1934.

ITEM 3. DEFAULT UPON SENIOR SECURITIES

None

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

At the Company's Annual Meeting of Shareholders held on September 5, 2003, the shareholders of the Company voted on the following three proposals:

Proposal 1 - To elect ten directors, each to serve until the next annual meeting of shareholders and until his successor is elected and shall have qualified; and

Proposal 2 - To approve the Board of Directors' selection of Deloitte and Touche LLP as the Company's independent auditors for the fiscal year ending December

27, 2003.

Voting results were as follows:

Proposal 1:	For	Withheld
Mr. Pilaro	2,393,710	767
Mr. Reed	2,375,872	18,605
Mr. Poch	2,394,063	414
Mr. Lazzara, Jr.	2,392,443	2,034
Mr. Peters	2,392,545	1,932
Mr. Thompson	2,394,064	413
Mr. Schechter	2,377,832	16,645
Mr. Fleming	2,390,036	441
Mr. Pierce	2,394,078	399
Mr. Montgomery	2,377,841	16,636

	For	Against
Proposal 2:	2,394,145	88

ITEM 5. OTHER INFORMATION.

Gasper Lazzara resigned from the Company's board of directors on September 8, 2003.

ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K

(A) EXHIBITS

31 Certifications of John L. Reed, CEO and John C. Dong, CFO (filed herewith).

32 Certifications of John L. Reed, CEO, and John C. Dong, CFO, pursuant to Section 906 of the SarbanesOxley Act Of 2002 (filed herewith).

99.1 Earnings Release of BriteSmile, Inc. dated November 11, 2003 for the 26 week period ended September 28, 2003 (filed herewith).

99.2 Transcript of Earnings Conference Call of the Company held on November 13, 2003 (herewith).

(B) REPORTS ON FORM 8-K

On August 12, 2003, the Company filed a Current Report on Form 8-K for the purpose of reporting the status of The Proctor & Gamble Company vs. Orcaceutical LLC, IDEX Dental Sciences, Inc., Robert Eric Montgomery, BriteSmile, Inc. and BriteSmile Development, Inc. filed in the United States District Court for the Southern District of Ohio.

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

BRITESMILE, INC.

/s/ John L. Reed	November 17, 2003
John L. Reed	Date
Chief Executive Officer	
/s/ John C. Dong	November 17, 2003
John C. Dong	Date
Chief Financial Officer	