

PUMATECH INC
Form S-3
September 09, 2003
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As filed with the Securities and Exchange Commission on September 8, 2003

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM S-3
REGISTRATION STATEMENT

UNDER
THE SECURITIES ACT OF 1933

PUMATECH, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

77-0349154
(I.R.S. Employer
Identification No.)

2550 North First Street, San Jose, California 95131

(408) 321-7650

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(Address, including zip code, and telephone number, including area
code, of registrant's principal executive offices)

Woodson Hobbs

President and Chief Executive Officer

Pumatech, Inc.

2550 North First Street, San Jose, California 95131 (408) 321-7650

(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 the effective date of this Registration Statement.

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.

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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 registrations 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, please check the following box. " _____

Calculation of Registration Fee

Title of each class of securities to be registered	Amount to be registered(1)	Proposed maximum offering price per share(2)	Proposed maximum aggregate offering price	Amount of registration fee
Common Stock, par value \$0.001(3)	134,445 shares	\$ 3.23	\$ 434,257	\$ 35

- (1) This registration statement shall cover any additional shares of our common stock which become issuable by reason of any stock dividend, stock split, recapitalization or any other similar transaction effected without the receipt of consideration that results in an increase in the number of shares of our outstanding common stock.
- (2) Estimated solely for the purpose of computing the amount of the registration fee pursuant to Rule 457(c) under the Securities Act of 1933 based upon the average of the high and low prices of the Common Stock as reported on the Nasdaq National Market on September 5, 2003.
- (3) This registration statement also relates to rights to purchase shares at the registrant's Series A Participating Preferred Stock (the Rights) which are attached to all shares of common stock. Until the occurrence of certain prescribed events, the Rights are not exercisable, are evidenced by the certificates for common stock and will be transferable along with and only with the common stock. The value attributable to the Rights, if any, is reflected in the value of the common stock.

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

EXPLANATORY NOTE

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This registration statement contains a prospectus relating to a public offering of an aggregate of 134,445 shares of our common stock that are owned by Loudfire, Inc., a Kansas corporation (Loudfire). We issued these shares in connection with the purchase of substantially all of the assets from Loudfire which was completed on July 22, 2003. The complete prospectus for this offering follows immediately.

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

Subject to Completion, dated September 8, 2003

PROSPECTUS

PUMATECH, INC.

134,445 shares of Common Stock

THE SELLING STOCKHOLDERS:

The selling stockholders identified on page 17 of this prospectus are selling 134,445 shares of our common stock. We are not selling any shares of our common stock under this prospectus and will not receive any of the proceeds from the sale of shares by the selling stockholders.

OFFERING PRICE:

The selling stockholders may sell the shares of common stock described in this prospectus in a number of different ways and at varying prices. The selling stockholders may be deemed to be underwriters, as such term is defined in the Securities Act of 1933, as amended. We provide more information about how they may sell their shares in the section titled "Plan of Distribution" on page 18.

TRADING MARKET:

Our common stock is listed on the Nasdaq National Market under the symbol PUMA. On September 5, 2003, the closing sale price of our common stock, as reported on the Nasdaq National Market, was \$3.19.

RISKS:

INVESTING IN OUR COMMON STOCK INVOLVES A HIGH DEGREE OF RISK. SEE "RISK FACTOR" BEGINNING ON PAGE 1.

Neither the Securities and Exchange Commission nor any 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 _____, 2003.

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WE HAVE NOT AUTHORIZED ANY DEALER, SALES PERSON OR OTHER PERSON TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATIONS OTHER THAN THOSE CONTAINED IN THIS PROSPECTUS OR ANY PROSPECTUS SUPPLEMENT. YOU MUST NOT RELY ON ANY UNAUTHORIZED INFORMATION. THIS PROSPECTUS IS NOT AN OFFER OF THESE SECURITIES IN ANY STATE WHERE AN OFFER IS NOT PERMITTED. THE INFORMATION IN THIS PROSPECTUS IS CURRENT AS OF SEPTEMBER 8, 2003. YOU SHOULD NOT ASSUME THAT THIS PROSPECTUS IS ACCURATE AS OF ANY OTHER DATE.

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PROSPECTUS SUMMARY

The following is a summary of our business. You should carefully read the section entitled "Risk Factors" in this prospectus, our Annual Report on Form 10-K for the year ended July 31, 2002 and our Quarterly Reports on Forms 10-Q for the quarters ended October 31, 2002, January 31, 2003 and April 30, 2003 for more information on our business and the risks involved in investing in our stock.

In addition to the historical information contained in this prospectus, this prospectus contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Exchange Act of 1934. These statements may be identified by the use of words such as "expects," "anticipates," "intends," "plans" and similar expressions. The outcome of the events described in these forward-looking statements is subject to risks and actual results could differ materially. The sections entitled "Risk Factors" beginning on page 1 of this prospectus, and "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Business" in our Annual Report and Quarterly Reports contain a discussion of some of the factors that could contribute to those differences.

PUMATECH, INC.

Overview

Pumatech, Inc. develops, markets and supports synchronization, mobile-application development, and mobile-application management/device management software that enables consumers, business professionals and information technology (IT) officers to extend the capabilities of enterprise groupware and vertical applications, handheld organizers/computers, Web-enabled cellular phones, pagers and other wireless or wireline personal communications platforms.

We are a Delaware corporation. Our principal executive offices are located at 2550 North First Street, Suite 500, San Jose, California 95131. Our telephone number at that location is (408) 321-7650 and our website is located at www.pumatech.com. Information contained in our website does not constitute part of this prospectus. References in the prospectus to "we," "our," "us," "the Company" and "Pumatech" refer to Pumatech, Inc., a Delaware corporation.

Acquisition of Assets from Loudfire, Inc.

On July 22, 2003, we acquired substantially all of the assets of Loudfire, Inc. ("Loudfire"). Loudfire was incorporated in Kansas on May 22, 2000 and is engaged in the business of developing software for accessing enterprise applications from web-enabled wireless devices and Internet browsers.

RISK FACTORS

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An investment in our common stock involves significant risks. You should carefully consider the risks and uncertainties described below and the other information in or incorporated by reference into this prospectus including our financial statements before deciding whether to buy shares of our common stock. The risks and uncertainties described below are intended to be the ones that are specific to our company or industry and that we deem to be material, but are not the only ones that we face. The trading price of our common stock could decline due to any of these and other risks and uncertainties, and you could lose part or all of your investment.

We may not be able to attain or sustain consistent future revenue growth on a quarterly or annual basis, or achieve and maintain profitability on a quarterly or annual basis.

Although we have reported sequential revenue growth over the first three quarters of fiscal 2003, we cannot be certain that this growth will continue at the same rate, or that our revenues will not decline in the future.

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Additionally, in implementing various plans to reduce operating expenses, we may fail to support our operations, which could reduce demand for our products and services and materially adversely affect our results of operations. We have experienced losses of \$5.9 million for the nine months ended April 30, 2003, and \$34.5 million and \$41.8 million for fiscal 2002 and 2001, respectively. An investor in our common stock should accordingly consider the risks, expenses and difficulties that companies frequently encounter in the rapidly changing market for synchronization products and services. These risks to us include:

- our evolving business model;
- our need and ability to generate and manage growth;
- rapid evolution of technology;
- decline in the market for personal data assistants;
- rigid competition; and
- difficult economic conditions and reduced IT spending.

To address these risks and uncertainties, we must take several steps, including:

- creating and maintaining strategic relationships;
- expanding sales and marketing activities;
- containing expenses while not unduly restructuring our business;
- integrating existing and acquired technologies;
- expanding our customer base and retaining key clients;
- introducing and expanding new products and services;
- competing in a highly competitive market; and
- attracting, retaining and motivating key employees.

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We may not be successful in implementing any of our strategies or in addressing these risks and uncertainties. Despite cost-reduction measures we implemented in previous years, we expect that we will continue to incur reasonable costs, primarily as a result of: (1) our investment in various initiatives to enhance our existing products, (2) development and introduction of new products and technologies that meet changing customer requirements, and (3) cultivation of relationships with our software development partners. Moreover, even if we accomplish our objectives, we still may not achieve sustainable profitability in the future.

There can be no assurance that we will generate sufficient revenue to meet expenses or to operate profitably in the future. Our losses today and the risk of future losses present significant risks to our stockholders. If we cannot achieve profitability or positive cash flows from operating activities, we may be unable to meet our working capital and other payment obligations, which would have a material adverse effect on our business, financial condition and results of operations and the price of our common stock.

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Acquisitions could result in operating difficulties.

As part of our business strategy, we acquired Starfish Software in March 2003 and substantially all of the assets of Loudfire, Inc. in July 2003. We may not realize the benefits of either the Starfish Software acquisition or the asset purchase from Loudfire, Inc., or any acquisition we may have in the future. Acquisitions could disrupt our business or not be successful and harm our financial condition. These acquisitions may not produce the revenues, earnings or business synergies that we anticipated and may cause our revenues to decline. In any acquisitions of or investments in other companies, products and technologies, we could:

issue stock that would dilute the ownership of our then existing stockholders;

reduce our cash reserves;

incur debt;

assume liabilities;

face Securities Exchange Commission challenges to the accounting treatment of these acquisitions, which may result in changes to our financial statements and cause us to incur charges to earnings over time that we did not expect;

incur amortization expenses related to intangible assets (other than goodwill); or

incur large and immediate write-offs.

These acquisitions and investments also involve numerous risks, including:

problems integrating the operations, technologies or products purchased with those we already have;

unanticipated costs and liabilities;

diversion of management's attention from our core business;

adverse effects on existing business relationships with suppliers and customers;

risks associated with entering markets in which we have no or limited prior experience;

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potential loss of key employees, particularly those of the acquired organizations; and

uncertainties in negotiating and consummating acquisitions that may be subject to third party, governmental or judicial approvals.

We may not be successful in addressing these risks or any other problems encountered in connection with the acquisition of Starfish, the asset purchase from Loudfire, or other risks and problems that we could encounter in future acquisitions, which would harm our business or cause us to fail to realize the anticipated benefits of our acquisitions.

Our investment in goodwill and intangibles resulting from our acquisitions could become impaired.

As of April 30, 2003, our goodwill and other intangibles amounted to \$4.1 million, net of accumulated amortization and reflective of newly acquired intangibles from Starfish. We ceased to amortize our existing goodwill upon our adoption of SFAS No. 142 in the beginning of fiscal 2003. We amortize approximately \$234,000 in the fourth quarter of fiscal 2003 and will amortize approximately \$772,000 and \$305,000 in fiscal 2004 and 2005, respectively. However, to the extent we do not generate sufficient cash flows to recover the net amount of any

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investment in intangibles recorded, the investment could be considered impaired and subject to earlier write-off. These impairments of goodwill or other intangible assets could have a negative impact on our results of operations in any given period.

Revenues in our technology licensing business may be subject to significant quarterly fluctuations.

Revenues in our technology licensing business are typically derived from multi-year contracts with customers that frequently include license fees, professional services fees, royalty payments and maintenance. Both the license fees and the professional services fees are typically earned in the initial one or two quarters subsequent to the signing of a contract with the customer. The related revenues from these initial quarterly periods may exceed the revenues earned during subsequent periods covered by the contract. To the extent that we do not secure additional contracts with the same customer or secure comparably sized commitments from other customers, we may not be able to achieve our revenue forecasts for future quarters. An example is the contract with America Online, under which we earned considerable revenue in the third quarter of fiscal 2003. We expect the revenue from America Online to decline in the first fiscal quarter of fiscal 2004 as the initial implementation is completed.

We are exposed to recent unfavorable economic conditions that resulted in lower revenue in the previous fiscal year and caused us to take various actions to reduce operating expenses. Continued or worsened conditions may result in additional actions to reduce operating expenses.

Our revenue declined sequentially in the six quarters before the first quarter of fiscal 2003, largely as a result of recent unfavorable economic conditions that have caused our customers to delay, decrease or cancel corporate IT spending. We also made adjustments and incurred charges associated with actions we implemented in prior periods, aimed at reducing operating expenses. We expect the current economic conditions to continue well into the remainder of fiscal 2003, and there can be no certainty as to the severity or duration of the economic slowdown. To date, various segments of the software industry have experienced significant economic downturns characterized by decreased product demand, price erosion, work slowdowns and layoffs. Moreover, there is increasing uncertainty in the enterprise software market attributable to many factors, including global economic conditions and strong competitive forces. Our future revenue and results of operations may continue to experience substantial fluctuations from quarter to quarter as a consequence of these factors, and such conditions and other factors affecting capital spending may continue to affect the timing of purchase or service orders from our current and potential customers. As a result, continued economic slowdowns in general may require us to take additional cost-reduction measures that could have a material adverse effect on our business, operating results or financial condition.

Our failure to protect our proprietary rights adequately may harm our competitive position.

We rely on a combination of patents, copyrights, trademarks, service mark and trade secret laws and contractual restrictions to establish and protect proprietary rights in our products and services. These measures afford only limited protection. We, combined with Starfish and as a result of our asset purchase from Loudfire, currently have 53 issued United States patents and an additional 25 patent applications pending in the United States. Effective intellectual property protection may not be available in every country in which we offer our products and services. Our means of protecting our proprietary rights in the United States or abroad may not be adequate, and competitors may independently develop similar technologies. We have also provided our source code under escrow agreements and to contractors in other countries, which may increase the likelihood of misappropriation by third parties. Our future success will depend in part on our ability to protect our proprietary rights. Despite our efforts to protect our proprietary rights and technologies, unauthorized parties may attempt to copy aspects of our products or to obtain and use trade secrets or other information that we regard as proprietary. Policing unauthorized use of our products is difficult, and while we are unable to determine the extent to which piracy of our software products exists, software piracy can be expected to be a persistent problem. Embedded software products, like those we offer, can be especially susceptible to software piracy. In addition, the laws of some countries do not protect our proprietary rights as fully as do the laws of the United States.

Litigation may be necessary to enforce our intellectual property rights or to protect our trade secrets or trademarks. For instance, on April 19, 2002, and January 10, 2003, we filed patent infringement suits against

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Extended Systems, Inc. and Synchrologic, Inc., respectively, in the United States District Court for the Northern District of California. In these suits, we allege that these companies' server and desktop products infringe on several of our synchronization-related patents. We are seeking an injunction against future sales of infringing server and desktop products, as well as damages for past sales of the infringing products, of both companies. Legal proceedings to enforce our intellectual property rights could be burdensome and expensive and could involve a high degree of uncertainty. These legal proceedings may also divert management's attention from growing our business. Failure to enforce and protect our intellectual property successfully would substantially harm our business.

Our market changes rapidly due to evolution in technology and industry standards. If we do not adapt to meet the sophisticated needs of our customers, our business and prospects will suffer.

The market for our products and services is characterized by rapidly changing technology, evolving industry standards and frequent new product and service introductions. Our future success will depend to a substantial degree on our ability to offer products and services that incorporate leading technology, address the increasingly sophisticated and varied needs of our current and prospective customers and respond to technological advances and emerging industry standards and practices on a timely and cost-effective basis. One should be aware that:

our technology or products may become obsolete upon the introduction of alternative technologies;

we may not have sufficient resources to develop or acquire new technologies or to introduce new products or services capable of competing with future technologies or service offerings;

the price of the products we provide is expected to decline as rapidly as the cost of any competitive alternatives; and

we may not be able to respond effectively to the technological requirements of the changing market.

To the extent we determine that new technologies and equipment are required to remain competitive, the development, acquisition and implementation of these technologies and equipment are likely to continue to require significant capital investment by us. Moreover, there can be no assurances that we can develop, market and deliver new products and technology on a timely basis. Sufficient capital may not be available for this purpose in the future, and even if it is available, investments in new technologies may not result in commercially viable technological processes and there may not be commercial applications for such technologies. If we do not develop and introduce new products and services and achieve market acceptance in a timely manner, our business and prospects may suffer.

Future geographical expansion and growth, including the establishment of new sales or engineering operations, can have an effect on our operations.

In the future, we may further expand into other geographical areas within the United States and internationally by establishing new sales or engineering operations in these areas. Expansions such as these may result in our inurrence of various costs and expenses, and place a significant strain upon our operating and financial systems and resources that could materially adversely affect our financial results following such an expansion. Expansions such as these also involve numerous business risks, including difficulties in the assimilation of the new operations and the diversion of management's attention from other business. It is also difficult to predict future requirements for the number and type of employees in the fields and geographies in which we plan to operate. Our failure to align employee skills and populations with revenue and market requirements would have a material adverse impact on our business and operating results. Moreover, there can be no assurance that newly established operations will contribute significantly to our sales or earnings.

We depend on strategic relationships and business alliances with our international software development partners.

We recently established a global software development program to assist us in the implementation of custom software and other technology applications. The program calls for shifting the composition of our

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engineering team to include several international software development partners, such as Romania-based SoftVision, Inc. and others. The success of our future development efforts will depend on our ability to maintain strategic relationships with these international partners. Our business relationships often consist of cooperative engineering programs, joint business seminars and cooperation in product development. Many of these relationships may not be contractual and may depend on the continued voluntary cooperation of each party with us. Divergence in strategy or change in focus by any of our partners may interfere with our ability to develop and support our products, which in turn could harm our business. Further, if our partners enter into strategic alliances with other companies, they could reduce their support of our products. Our existing relationships may be jeopardized if we enter into alliances with competitors of our strategic partners. One or more of our partners may use the information they gain from their relationship with us to develop competing products. In addition, our operations could be adversely affected if any of these international partners is affected by volatile economic, political or military conditions in its country or by various restrictions imposed by its country regarding the transfer of technology, the mobile computing industry and business in general.

There are many companies providing competing products and services.

There are few substantial barriers to entry in our markets and we expect that we will face additional competition from existing competitors and new market entrants in the future. We currently face direct competition with respect to our Intellisync, Enterprise Intellisync and Satellite Forms products. Intellisync enterprise and retail products face competition from AvantGo Inc., Pylon Conduit, Chapura, Inc., Pocket Mirror, Common Time, Cadenza, mNotes, Extended Systems, Inc., XTNDConnectPC, IBM Corporation, Lotus Software EasySync Pro, Microsoft, Inc., ActiveSync, Palm Desktop from Palm, Inc. and others. Satellite Forms faces competition from Adobe Systems, Inc., Aligo, Inc., AppForge, Inc., Covigo, Inc., iConverse, Inc., Metrowerks Code Warrior, mPortal, Inc., Pencil Corporation, Pendragon Software Corporation, Penright Corporation, MobileBuilder and others. Our server-based software synchronization features face competition from Aether Systems, AvantGo, CommonTime, Extended Systems, FusionOne, Inc., InfoSpace, Inc., Infowave Software, JP Mobile, Inc., Microsoft, Openwave, Inc., Sybase, Inc., Synchrologic, Inc., Wireless Knowledge, Inc., XcelleNet, Inc. and others. In addition to direct competitors like these, we face indirect competition from existing and potential customers that may provide internally developed solutions to each of our technology licensing components.

Many of our competitors have substantially greater financial, technical and marketing resources, larger customer bases, longer operating histories, greater name recognition and more established relationships in the industry than we do. Our larger competitors may be able to provide customers with additional benefits in connection with their Internet systems and network solutions, including reduced communications costs. As a result, these companies may be able to price their products and services more competitively than we can and respond more quickly to new or emerging technologies and changes in customer requirements. If we are unable to compete successfully against our current or future competitors, we may lose market share, and our business and prospects would suffer.

Increased competition could result in:

price and revenue reductions, and lower profit margins;

loss of customers or failure to obtain additional customers; and

loss of market share.

Any one of these could materially and adversely affect our business, financial condition and results of operations.

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Our business and prospects depend on, to a significant degree, demand for, and market acceptance of, wireless and other mobile computing devices.

The use of wireless and other mobile computing devices for retrieving, sharing and transferring information among businesses, consumers, suppliers and partners has begun to develop only in recent years. Our success will depend in large part on continued growth in the use of wireless and other mobile computing devices including PDAs, handheld computers, smart phones, pagers and other mobile devices. The current global economic slowdown has adversely affected the growth of the market for wireless and other mobile computing devices. In addition, critical issues concerning the commercial use of wireless and other mobile computing devices, including security, reliability, cost, ease of access and use, quality of service, regulatory initiatives and necessary increases in bandwidth availability, remain unresolved and are likely to continue to adversely affect the development of the market for our services. The adoption of wireless and other mobile computing devices for information retrieval and exchange, commerce and communications generally will require the acceptance of a new medium of conducting business and exchanging information. Demand for, and market acceptance of, wireless and other mobile computing devices are subject to a high level of uncertainty and are dependent on a number of factors, including:

the growth in access to, and market acceptance of, new interactive technologies;

emergence of a viable and sustainable market for wireless and mobile computing services;

the development of technologies that facilitate interactive communication between organizations; and

increases in bandwidth for data transmission.

If the market for wireless and other mobile computing devices as a commercial or business medium does not develop, or develops more slowly than expected, our business, results of operations and financial condition will be seriously harmed.

Specifically, even if the wireless and mobile computing services market does develop, products and services that we currently offer or may offer in the future may not achieve widespread market acceptance. Failure of our current and planned products or services to operate as expected could delay or prevent their adoption. If our target customers do not adopt, purchase and successfully deploy our other current and planned products and services, our revenue will not grow significantly and our business, results of operations and financial condition will be seriously harmed.

The size of the mobile computing market cannot be accurately predicted, and if our market does not grow as we expect, our revenue will be below our expectations and our business and financial results will suffer.

The size of the mobile computing market cannot be accurately estimated, and therefore we are unable to accurately determine the potential demand for most of our products and services. If our customer base does not expand or if there is not widespread acceptance of our products and services, our business and prospects will be harmed. We believe that our potential to grow and increase the market acceptance of our products depends principally on the following factors, some of which are beyond our control:

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growth in sales of handheld devices, smart phones and other mobile computing devices, supported by our software and growth in wireless network capabilities to match end-user demand and requirements;

our product and service differentiation and quality;

our ability to provide timely, effective customer support;

our distribution and pricing strategies as compared with those of our competitors;

the effectiveness of our marketing strategy and efforts;

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our industry reputation; and

general industry and economic conditions such as slowdowns in the computer or software markets or the economy in general.

There are risks associated with our long-term investments that may adversely affect our results of operations.

Historically, we have made direct and indirect investments in privately held companies. We may continue to make strategic investments in the future. There can be no assurance that our investments will bring us a return on investment. In addition, because the strategic investments tend to be in small, start-up technology companies that are at risk for financial failure especially during an economic slowdown, there is a greater risk that the investments might be impaired. In the fourth quarter of fiscal 2003, for instance, we sold our limited partnership interest in a venture capital fund company at a loss. The sale of the interest allowed us to avoid commitments for further investments in equity instruments of various privately-held companies made through the venture capital fund, many of which had not generated adequate returns.

We are dependent on our international operations for a significant portion of our revenues.

International revenue, primarily from customers based in Japan and Europe, accounted for 35% of our revenue in the first three quarters of fiscal 2003, and 31% and 26% of our revenue in fiscal 2002 and 2001, respectively. In the future, we may further expand our international presence. As we continue to expand internationally, we are increasingly subject to risks of doing business internationally, including:

unexpected changes in regulatory requirements and tariffs;

export controls relating to encryption technology and other export restrictions;

reduced protection for intellectual property rights in some countries;

political and economic instability, including continuing military conflicts in the Middle East;

the effect of general economic conditions and world events, including epidemics like severe acute respiratory syndrome (SARS);

difficulties in staffing and managing international operations;

fluctuations in currency exchange rates that may make our products more expensive to international customers, including the recent decline of the U.S. dollar against the Euro;

gains and losses on the conversion to United States dollars of accounts receivable and accounts payable arising from international operations, due to foreign currency denominated sales;

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potentially adverse tax consequences;

nonrefundable withholding taxes on royalty income from customers in certain countries, such as Japan and Taiwan;

an adverse effect on our provision for income taxes based on the amount and mix of income from international customers;

longer payment cycles;

problems in collecting accounts receivable;

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exposure to risk of non-payment by customers in other countries with highly inflationary economies; and

seasonal reductions in business activity during the summer months in Europe and certain other parts of the world.

Any of these risks could harm our international operations. For example, some European countries already have laws and regulations related to content distributed via Internet technologies that are stricter than those currently in force in the United States.

Our international sales growth will be limited if we, in the future, are unable to expand international sales channel management and support, customize products for local markets, and develop relationships with international service providers, distributors and device manufacturers. Even if we are able to expand successfully international operations, we cannot be certain that we will succeed in maintaining or expanding international market demand for our products.

Operating results may fluctuate significantly and may be difficult to predict.

Our operating results have fluctuated in the past and are likely to continue to fluctuate significantly due to a number of factors, many of which are outside of our control, including, but not limited to:

the demand for our products and services;

our success in developing new products and integrating acquired technologies;

the timing of new product introductions by us and our competitors;

market acceptance of our new and enhanced products and services;

market acceptance of handheld devices generally, and those supported by our products and services;

the emergence of new industry standards;

the timing of customer orders;

the mix of products and services sold;

product life cycles;

competition;

the mix of distribution channels employed;

seasonal trends;

the timing and magnitude of our capital expenditures;

the evolving and unpredictable nature of the markets for our products and mobile computing devices generally;

the growth rate of the markets for PCs, wireless devices and mobile computing devices in general; and

general economic conditions.

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If we fail to maintain our existing relationships or enter into new relationships with OEMs, business development organizations and sales distribution channels, our brand awareness, the sales of our products and use of our services would suffer.

The success of our product and service offerings depends, in large part, on our ability to develop and maintain relationships with OEMs and business development organizations that help distribute our products and promote our services. We depend on these relationships to:

distribute our products to purchasers of mobile devices;

increase the use of our technology licensing components;

build brand awareness through product marketing; and

market our products and services cooperatively.

If the products that these equipment manufacturers or business development organizations sell, or the operating systems upon which these products are based, were to lose popularity, or if any of these companies cease to use our product and service offerings in significant volumes, our business would suffer.

The relationships we have developed with sales distribution channels and other resellers also allow us to offer our products and services to a much larger customer base than we would otherwise be able to reach through our own direct sales and marketing efforts. Our biggest distributor, Ingram Micro US, accounted for 12% of our total revenue in the nine months ended April 30, 2003. There are also a significant number of our customers that purchase our products and services through other resellers, and we anticipate they will continue to do so as we expand our product offerings. Because we often sell indirectly through sales distribution channels and resellers, we cannot control the relationships through which customers purchase our products. We do not control the presentation of our products to these customers as well. Our sales, therefore, could also be affected by disruptions in the relationships between our resellers and customers. Resellers may also choose not to emphasize our products to their customers. Any of these occurrences could diminish the effectiveness of our distribution channel and lead to decreased sales.

We are exposed to the risk of product returns and rotations from our distributors and value-added resellers, which are estimated and recorded by us as a reduction in sales.

Although we attempt to monitor and manage the volume of our sales to distributors and resellers, overstocking by our distributors and resellers or changes in their inventory level policies or practices may require us to accept returns above historical levels. In addition, the risk of product returns may increase if the demand for new products we introduce is lower than what we anticipate at the time of introduction. Although we believe that we provide an adequate allowance for sales returns, there can be no assurance that actual sales returns will not exceed our estimated recorded allowance. Any product returns in excess of recorded allowances could result in a material adverse effect on net revenues and operating results. As we introduce more products, timing of sales to end users and returns to us of unsold products by distributors and resellers become more difficult to predict and could result in material fluctuations in quarterly operating results.

If we are unable to provide satisfactory and high quality services through our professional services group, customer satisfaction and demand for our products will suffer.

Many of our customers have been successful in implementing our various technology initiatives without further provision of technical service. However, we believe that building strong relationships with our customers, as well as future growth in our product sales, depends on our ability to provide our customers with professional services, including customer support, training, consulting and initial implementation and deployment of our products when necessary. We have an in-house professional services group and use international software development partners with a workforce that can perform these tasks and that also educates third-party systems integrators in the use of our products so that these systems integrators can provide these services to our customers. If we are unable to

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develop sufficient relationships with third-party systems integrators and other customers, unable to complete product implementations in a timely manner, or unable to provide customers with satisfactory and quality support, consulting, maintenance and other services, we could face customer dissatisfaction, damage to our reputation, decreased overall demand for our products and loss of revenue.

We may incur significant stock-based compensation charges related to certain stock options in future periods.

Based on certain accounting standards involving stock compensation, we have incurred and will continue to incur variable accounting costs related to stock options, including those associated with our cancellation/regrant programs and certain unvested, restricted shares exercised with a full recourse note. Those standards require us to remeasure compensation costs for such options each reporting period based on changes in the market value of the underlying common stock. Depending upon movements in the market value of our common stock, the variable accounting treatment of those stock options may result in significant additional non-cash compensation costs in future periods.

In addition, there has been increasing public debate about the proper accounting treatment for employee stock options. Although we are not currently required to record any compensation expense in connection with option grants that have an exercise price at or above fair market value, it is likely that future laws or regulations will require us to treat stock options as a compensation expense. Any such change in accounting treatment could result in our reporting increased operating expenses, which would decrease any reported net income or increase any reported net loss. Note 1 of our consolidated financial statements shows the impact that such a change in accounting treatment would have had on our net loss and net loss per share if it had been in effect during the reporting periods shown and if the compensation expense were calculated as described in Note 1.

Recent threats of terrorism and resulting military and other actions, including the armed conflict with Iraq, could adversely affect our business.

Threats of further terrorism since the September 11 terrorist incident in the United States, as well as the war with Iraq, continue to shake consumer confidence. The United States continues to use military force actively to pursue those behind these attacks and implement broader actions against global terrorism. The continued threat of terrorism throughout the world, the escalation of military action, and heightened security measures in response to such threats may cause further disruption to the global economy, including widespread recession. To the extent that these disruptions result in a continued general decrease in consumer spending and demand for our products and services, our inability to market effectively our products, or financial or operational difficulties for various vendors on whom we rely for certain integral services used to support our operations, our business and results of operations could be materially and adversely affected. We are unable to predict whether the threat of terrorism, continuing and possible future military actions, or the responses thereto will result in any long-term commercial disruptions or if such activities or responses will have any long-term material adverse effect on our business, results of operations or financial condition.

Provisions in Our Charter Documents and Delaware Law and Our Adoption of a Stockholder Rights Plan May Delay or Prevent Acquisition Of Us, Which Could Decrease the Value of Our Common Stock.

Our certificate of incorporation and bylaws and Delaware law contain provisions that could make it more difficult for a third party to acquire us without the consent of our Board of Directors. Delaware law also imposes some restrictions on mergers and other business combinations between us and any holder of 15% or more of our outstanding common stock. In addition, our Board of Directors has the right to issue preferred stock without stockholder approval, which could be used to dilute the stock ownership of a potential hostile acquirer. Although we believe these provisions of our certificate of incorporation and bylaws, Delaware law and our stockholder rights plan, which is described below, will provide for an opportunity to receive a higher bid by requiring potential acquirers to negotiate with our Board of Directors, these provisions apply even if

the offer may be considered beneficial by some of our stockholders.

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Our Board of Directors adopted a stockholder rights plan, pursuant to which we declared and paid a dividend of one stock purchase right (a Right) for each outstanding share of our common stock, par value \$0.001 per share (the Common Shares), held by stockholders of record as of January 24, 2003 (the Record Date). The Rights will become exercisable only upon the occurrence of certain events specified in the Preferred Shares Rights Agreement (the Rights Agreement) between us and Computershare Investor Services LLC, as Rights Agent, including the acquisition of 15% of our outstanding common stock by a person or group. In addition, one Right shall be issued with each Common Share that becomes outstanding between the Record Date and the earlier of the Distribution Date, and the Expiration Date (as such terms are defined in the Rights Agreement) or in certain circumstances, after the Distribution Date. Each Right entitles the registered holder, other than an acquiring person, under specified circumstances, to purchase from us one one-thousandth of a share of our Series A Participating Preferred Stock, par value \$0.001 per share (the Preferred Shares), at a price of \$10.00 per one one-thousandth of a Preferred Share, subject to adjustment. In addition, each Right entitles the registered holder, other than an acquiring person, under specified circumstances, to purchase from us that number of shares of Common Stock having a market value of two times the exercise price of the Right. Subject to certain limitations, the terms of the Rights may be amended by a resolution of the Board of Directors without the consent of the holders of the Rights. Reference is made to our Report on Form 8-K dated January 15, 2003 regarding the stockholder rights plan.

Future sales of our common stock, including the shares being offered by this prospectus, may depress our stock price.

If our current stockholders sell substantial amounts of common stock, including the shares being offered by this prospectus, in the public market, the market price of our common stock could fall. In addition, these sales of common stock could impede our ability to raise funds at an advantageous price, or at all, through the sale of securities. As of September 5, 2003, we had approximately 48,086,185 shares of common stock outstanding. Virtually all of our shares, other than shares held by affiliates, are freely tradable. In addition, shares held by affiliates are tradable, subject to the volume and other restrictions of Rule 144. When the SEC declares the Registration Statement on Form S-3, of which this prospectus is a part, effective, the selling stockholders will be able to trade their shares freely in the public market, which could result in a decrease in the price of our stock.

Our common stock will likely be subject to substantial price and volume fluctuations due to a number of factors, some of which are beyond our control.

The trading price of our common stock has been, and is likely to continue to be, highly volatile. Our stock price is subject to wide fluctuations in response to a variety of factors including:

quarterly variations in operating results;

seasonal fluctuations on product sales;

announcements of technological innovations;

announcements of new software or services by us or our competitors;

changes in financial estimates by securities analysts; and

other events beyond our control, including general market conditions, as well as the war