

KOPIN CORP
Form 10-Q
March 17, 2008
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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 30, 2006

OR

.. **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

Commission file number 0-19882

KOPIN CORPORATION

(Exact name of registrant as specified in its charter)

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Delaware
State or other jurisdiction of
incorporation or organization

04-2833935
(I.R.S. Employer
Identification No.)

200 John Hancock Rd., Taunton, MA
(Address of principal executive offices)

02780-1042
(Zip Code)

Registrant's telephone number, including area code: (508) 824-6696

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to filing requirements for the past 90 days. Yes No

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of large accelerated filer and accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.

Large Accelerated Filer Accelerated Filer Non-Accelerated Filer

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

Indicate the number of shares outstanding of each issuer's classes of common stock, as of the latest practicable date.

Class	Outstanding as of March 14, 2008
Common Stock, par value \$.01	71,043,391

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EXPLANATORY NOTE REGARDING RESTATEMENTS

In this Quarterly Report on Form 10-Q (Form 10-Q), we are restating our condensed consolidated financial statements as of December 31, 2005 and for the three and nine months ended September 24, 2005. Contemporaneous with the filing of this Form 10-Q, we are filing an Annual Report on Form 10-K (Form 10-K) for the year ended December 30, 2006 and Quarterly Reports on Form 10-Q for the quarters ended March 31, 2007, June 30, 2007 and September 29, 2007. In our Form 10-K, we are restating our consolidated financial statements as of December 31, 2005 and for each of the years ended December 31, 2005 and December 25, 2004 and each of the quarters in 2005 and the three month periods ended April 1, 2006 and July 1, 2006.

The restatement of our consolidated financial statements reflects the correction of the following errors, in accordance with Financial Accounting Standards Board (FASB) No. 154 *Accounting Changes and Error Corrections* :

1. stock-based compensation expense not previously recorded for certain stock-based awards for which the original accounting was deemed incorrect;
2. tax-related adjustments resulting from the above errors in stock option accounting; and
3. the recording of previously unrecorded adjustments not related to accounting for stock options that were previously deemed to be immaterial to our consolidated financial statements.

On November 1, 2006, in response to a derivative lawsuit filed against the Company related to the Company's employee stock option granting practices and accounting (see Part II Item I Legal Proceedings), our Board of Directors appointed a Special Investigation Committee of the Board of Directors, referred to as the Special Committee, composed solely of an independent director who was not on the Company's Board of Directors and who had no affiliation with the Company during the period between 1995 and 2005, to conduct a comprehensive investigation of our historical stock option practices.

Responding to the findings of the Special Committee, filed in a Form 8-K on May 9, 2007, we reviewed the measurement dates for stock option and nonvested restricted common share grants (collectively, "stock-based awards") used in our historical financial reporting. We reviewed the measurement dates for all 19.8 million of our historical stock-based award grants and reviewed all available evidence for each grant during the period from January 1, 1995 through December 30, 2006, referred to as the Investigation Period.

Stock-based awards granted during the Investigation Period can be categorized as follows:

New Hire Employee Stock-Based Awards. Total awards made to new hire employees during the Investigation Period totaled 3.8 million.

All Other Stock-Based Awards to Non Officer Employees. Total awards made to non-officers excluding new hires during the Investigation Period totaled 6.4 million.

All Other Stock-Based Awards to Officers. Total awards made to officers excluding new hires during the Investigation Period totaled 7.9 million.

Director Stock-Based Awards. Total awards made to members of the Board of Directors during the Investigation Period totaled 1.4 million.

Consultant Awards. Total awards made to consultants during the Investigation Period totaled 265,000.

Certain of the stock-based awards granted during the Investigation Period had exercise prices that tended to be at a price towards the lower end of range of common stock prices over a 90 day period from the original grant date.

Impact of Restatement

For stock-based awards granted during the period January 1, 1995 through December 31, 2005 of the Investigation Period, the accounting principle applied under United States Generally Accepted Accounting Principles (US GAAP) was Accounting Principles Board Opinion No. 25

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(APB 25), *Accounting for Stock Issued to Employees*. For stock-based awards granted during the period January 1, 2006 through December 30, 2006, of the Investigation Period we applied Statement of Financial Accounting Standards No. 123 (revised 2004), *Share-Based Payment* (SFAS 123R). APB 25 prescribed that there was a compensation element in a stock option award to an employee if the option exercise price was below the fair market value of the company's stock on the measurement date. The measurement date is the date that the number of options the employee was to receive and the option exercise price were known. We typically accounted for all stock-based awards to new hires, employees, officers and directors, through December 31, 2005 under APB 25 using the stated grant date as the measurement date. We typically issued stock options with an exercise price equal to the fair market value of our common stock on the recorded

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grant date, and therefore recorded no stock-based compensation expense. We recorded compensation expense for awards of restricted common shares for the fair value of the common shares on the grant date over the vesting period. We refer to the measurement date used when the stock-based award was granted during the Investigation Period as the Original Measurement Date. If, as a result of our option review, we used a different measurement date than the Original Measurement Date to determine if there was an element of compensation expense in a stock-based award, we referred to the new measurement date as the Revised Measurement Date.

We reviewed 14.3 million stock-based awards granted to officers and non-officers (excluding new hires, consultants and Board of Directors awards which are addressed below) to verify that the terms of the awards were approved and known with finality on the Original Measurement Date. We determined that for 11.5 million stock-based awards the number of shares was not known with finality on the Original Measurement Date. In those situations where we had either not completed the process of determining the number of stock options a particular employee was to receive or the administrative process was not finished on the Original Measurement Date, a compensation charge is required to reflect the difference between the exercise price of the stock-based award and the stock price (when it exceeds the exercise price) on the date the determination or process was completed. We recorded compensation expense of \$33.6 million, excluding income tax effects, in connection with the restatement described above.

We reviewed 3.8 million stock-based awards granted to new hires to verify that the grant date was the same date as the date that the individual met the definition of an employee, generally the employee start date. We identified instances where employees did not start on their anticipated start date per their offer letter but commenced employment at a later date; however the option was granted based on the anticipated start date included in their offer letter. Compensation expense is required to reflect the difference between the exercise price of the stock option and the stock price on the employee start date. We identified 718,000 options following this pattern and recorded compensation expense of \$0.6 million, excluding income tax effects, in connection with the restatement described above. We identified one situation where an offer letter gave the employee an option to purchase 120,000 shares of our common stock with an exercise price equal to our common stock price on the date he commenced employment but we incorrectly granted the option with an exercise price equal to our common stock price on the date we made the offer of employment. We recorded compensation expense of \$1.0 million, excluding income tax effects, in connection with the restatement described above. We identified one situation where the employment offer letter gave the prospective employee an option to purchase 400,000 shares of our common stock at an exercise price equal to our common stock price on the date the employment offer letter was accepted. In this situation, compensation expense should have been recorded to reflect the difference between the exercise price and our common stock price on the date employment commenced. We recorded compensation expense of \$0.4 million, excluding income tax effects, in connection with the restatement described above.

We reviewed 265,000 stock option awards granted to consultants. We identified five grants to consultants totaling 205,000 options, which we accounted for incorrectly and we recorded compensation expense of \$1.8 million, excluding income tax effects, in connection with the restatement described above. Of the \$1.8 million of compensation expense, \$1.6 million related to two grants made in January of 1996. We originally accounted for these consultant awards under APB 25 and recorded no compensation expense for these awards.

We also reviewed 1.4 million stock-based awards to members of the Board of Directors. We identified two awards of 300,000 options for which we recorded compensation expense of approximately \$30,000, excluding income tax effects, as the result of an inconsistent pricing practice.

All financial information contained in this quarterly report gives effect to the restatements of our consolidated financial statements as described above. We have not amended, and we do not intend to amend, our previously filed annual reports or quarterly reports for each of the fiscal years and fiscal quarters of 1995 through 2005, and for the first two fiscal quarters of the fiscal year ended December 30, 2006. Financial information included in reports previously filed or furnished by us for the periods from fiscal 1995 through July 1, 2006 should not be relied upon and are superseded by the information in this quarterly report.

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	September 30, 2006	December 31, 2005 (As restated - See Note 2)
ASSETS		
Current assets:		
Cash and equivalents	\$ 24,456,852	\$ 31,502,645
Marketable securities, at fair value	84,236,308	88,254,220
Accounts receivable, net of allowance of \$345,000 and \$281,000 in 2006 and 2005	7,899,075	7,937,397
Accounts receivable from unconsolidated affiliates	2,462,799	3,040,012
Unbilled receivables	2,221,364	2,037,406
Inventory	9,550,303	9,258,232
Prepaid taxes	143,023	433,744
Prepaid expenses and other current assets	1,944,472	1,466,735
Total current assets	132,914,196	143,930,391
Property, plant and equipment, net	16,217,262	11,250,453
Deferred tax asset		370,000
Other assets	12,630,883	10,782,666
Total assets	\$ 161,762,341	\$ 166,333,510
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 6,739,051	\$ 7,299,695
Accounts payable to unconsolidated affiliates	635,550	1,034,586
Accrued payroll and expenses	2,515,775	2,944,109
Accrued warranty	1,030,000	1,030,000
Billings in excess of revenue earned	1,006,966	1,080,810
Accrued tax	249,000	457,000
Other accrued liabilities	1,563,235	1,134,051
Total current liabilities	13,739,577	14,980,251
Asset retirement obligations	764,148	740,000
Minority interest in subsidiary	4,263,825	4,337,925
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, par value \$.01 per share: authorized, 3,000 shares; none issued		
Common stock, par value \$.01 per share: authorized, 120,000,000 shares; issued 71,272,811 shares in 2006 and 71,235,036 shares in 2005 outstanding 67,428,611 in 2006 and 68,874,086 in 2005	712,728	712,350
Additional paid-in capital	304,885,791	305,166,998
Deferred compensation		(2,689,048)
Treasury stock (3,455,480 and 1,893,200 shares in 2006 and 2005, respectively, at cost)	(14,005,965)	(7,398,868)

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Accumulated other comprehensive income	2,308,040	2,122,241
Accumulated deficit	(150,905,803)	(151,638,339)
Total stockholders' equity	142,994,791	146,275,334
Total liabilities and stockholders' equity	\$ 161,762,341	\$ 166,333,510

See notes to consolidated financial statements

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	Three Months Ended		Nine Months Ended	
	September 30, 2006	September 24, 2005 (As Restated)	September 30, 2006	September 24, 2005 (As Restated)
		See Note 2)		See Note 2)
Revenues:				
Product revenues	\$ 13,744,041	\$ 24,006,807	\$ 48,746,405	\$ 61,754,067
Research and development revenues	1,960,151	1,409,084	4,512,837	3,603,334
	15,704,192	25,415,891	53,259,242	65,357,401
Expenses:				
Cost of product revenues	10,733,895	15,651,523	36,460,789	39,823,827
Research and development	2,676,931	2,533,883	8,132,489	8,811,602
Selling, general and administrative	4,018,942	2,965,826	11,767,381	10,316,279
Asset impairment				517,902
	17,429,768	21,151,232	56,360,659	59,469,610
(Loss) income from operations	(1,725,576)	4,264,659	(3,101,417)	5,887,791
Other income and (expense):				
Interest income	1,211,360	931,121	3,580,073	2,531,807
Other income	287,773	17,741	319,814	23,067
Gain on sale of Micrel common stock			1,208,000	
Foreign currency transaction (losses) gains	(143,442)	130,458	(624,367)	(32,038)
Interest and other expense	(10,155)	(70,053)	(45,063)	(105,020)
	1,345,536	1,009,267	4,438,457	2,417,816
(Loss) income before income taxes; minority interest in loss (income) of subsidiary and equity loss in unconsolidated affiliate	(380,040)	5,273,926	1,337,040	8,305,607
(Provision) benefit for income taxes	(551,073)	44,262	(523,141)	(63,966)
(Loss) income before minority interest in loss (income) subsidiary and equity loss in unconsolidated affiliate	(931,113)	5,318,188	813,899	8,241,641
Minority interest in loss (income) of subsidiary	144,817	(267,687)	394,479	(425,692)
Equity loss in unconsolidated affiliate	(97,740)	(18,515)	(475,843)	(168,023)
Net (loss) income	\$ (884,036)	\$ 5,031,986	\$ 732,535	\$ 7,647,926
(Loss) income per share:				
Basic	\$ (0.01)	\$ 0.07	\$ 0.01	\$ 0.11
Diluted	\$ (0.01)	\$ 0.07	\$ 0.01	\$ 0.11
Weighted average number of common shares outstanding:				
Basic	67,798,463	68,917,786	68,283,179	69,492,341

Diluted	67,798,463	69,810,168	68,305,531	69,852,326
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CONSOLIDATED STATEMENTS OF COMPREHENSIVE (LOSS) INCOME

(unaudited)

	Three Months Ended		Nine Months Ended	
	September 30, 2006	September 24, 2005 (As Restated)	September 30, 2006	September 24, 2005 (As Restated)
Net (loss) income	\$ (884,036)	See Note 2) \$ 5,031,986	\$ 732,535	See Note 2) \$ 7,647,926
Foreign currency translation adjustments	169,186	(247,050)	875,066	