

SUPERNUS PHARMACEUTICALS INC

Form 10-Q

November 09, 2015

[Table of Contents](#)

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

WASHINGTON, DC 20549

**FORM 10-Q**

(Mark One)

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

For the quarterly period ended September 30, 2015

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: 001-35518

## SUPERNUS PHARMACEUTICALS, INC.

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**20-2590184**

(I.R.S. Employer  
Identification No.)

**1550 East Gude Drive, Rockville, MD**

(Address of principal executive offices)

**20850**

(Zip Code)

**(301) 838-2500**

(Registrant's telephone number, including area code)

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 such filing requirements for the past 90 days.  Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).  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 definition of "large accelerated filer," "accelerated filer," and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

(Do not check if a smaller reporting company)

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

The number of outstanding shares of the registrant's common stock, par value \$0.001 per share, as of the close of business on October 30, 2015 was 48,923,347.



Table of Contents

**SUPERNUS PHARMACEUTICALS, INC.**

**FORM 10-Q QUARTERLY REPORT**

**FOR THE QUARTERLY PERIOD ENDED SEPTEMBER 30, 2015**

**TABLE OF CONTENTS**

	<b>Page No.</b>
<b><u>PART I FINANCIAL INFORMATION</u></b>	
Item 1. Financial Statements	
<u>Consolidated Balance Sheets as of September 30, 2015 (Unaudited) and December 31, 2014</u>	1
<u>Consolidated Statements of Operations for the three and nine month periods ended September 30, 2015 and 2014 (Unaudited)</u>	2
<u>Consolidated Statements of Comprehensive Income for the three and nine month periods ended September 30, 2015 and 2014 (Unaudited)</u>	3
<u>Consolidated Statements of Cash Flows for the nine month periods ended September 30, 2015 and 2014 (Unaudited)</u>	4
<u>Notes to Consolidated Financial Statements (Unaudited)</u>	5
Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations	18
Item 3. Quantitative and Qualitative Disclosures about Market Risk	30
Item 4. Controls and Procedures	30
<b><u>PART II OTHER INFORMATION</u></b>	
Item 1. Legal Proceedings	31
Item 1A. Risk Factors	33
Item 2. Unregistered Sales of Equity Securities and Use of Proceeds	33
Item 3. Defaults Upon Senior Securities	33
Item 4. Mine Safety Disclosures	33
Item 5. Other Information	34
Item 6. Exhibits	34
<b><u>SIGNATURES</u></b>	<b>35</b>

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Table of Contents**PART I FINANCIAL INFORMATION****Supernus Pharmaceuticals, Inc.****Consolidated Balance Sheets****(in thousands, except share amounts)**

	<b>September 30, 2015 (unaudited)</b>	<b>December 31, 2014</b>
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 26,294	\$ 36,396
Marketable securities	31,408	37,940
Accounts receivable, net	23,603	17,270
Inventories, net	14,742	13,441
Prepaid expenses and other current assets	6,504	3,845
Total current assets	102,551	108,892
Long term marketable securities	43,967	19,816
Property and equipment, net	3,210	2,448
Intangible assets, net	16,627	5,434
Other non-current assets	415	918
<b>Total assets</b>	<b>\$ 166,770</b>	<b>\$ 137,508</b>
<b>Liabilities and stockholders' equity</b>		
Current liabilities:		
Accounts payable	\$ 2,812	\$ 1,863
Accrued sales deductions	18,820	8,461
Accrued expenses	21,353	17,026
Deferred licensing revenue	143	143
Total current liabilities	43,128	27,493
Deferred licensing revenue, net of current portion	1,167	1,274
Convertible notes, net of discount	8,068	26,947
Other non-current liabilities	3,815	3,876
Derivative liabilities	1,156	6,564
Total liabilities	57,334	66,154
<b>Stockholders' equity:</b>		
Common stock, \$0.001 par value, 130,000,000 shares authorized at September 30, 2015 and December 31, 2014; 48,686,657 and 42,974,463 shares issued and outstanding at September 30, 2015 and December 31, 2014, respectively	49	43
Additional paid-in capital	261,006	230,122
Accumulated other comprehensive loss	(107)	(154)
Accumulated deficit	(151,512)	(158,657)
Total stockholders' equity	109,436	71,354
<b>Total liabilities and stockholders' equity</b>	<b>\$ 166,770</b>	<b>\$ 137,508</b>

See accompanying notes.

Table of Contents**Supernus Pharmaceuticals, Inc.****Consolidated Statements of Operations**

(in thousands, except share and per share data)

	Three Months ended September 30,		Nine Months ended September 30,	
	2015	2014	2015	2014
	(unaudited)		(unaudited)	
<b>Revenue</b>				
Net product sales	\$ 38,551	\$ 22,452	\$ 100,914	\$ 59,056
Revenue from royalty agreement		30,000		30,000
Licensing revenue	35	36	857	2,188
<b>Total revenue</b>	<b>38,586</b>	<b>52,488</b>	<b>101,771</b>	<b>91,244</b>
<b>Costs and expenses</b>				
Cost of product sales	2,248	1,321	5,628	3,476
Research and development	9,129	4,657	19,690	13,816
Selling, general and administrative	22,900	17,343	65,637	54,452
<b>Total costs and expenses</b>	<b>34,277</b>	<b>23,321</b>	<b>90,955</b>	<b>71,744</b>
<b>Operating income</b>	<b>4,309</b>	<b>29,167</b>	<b>10,816</b>	<b>19,500</b>
<b>Other income (expense)</b>				
Interest income	169	78	419	265
Interest expense	(292)	(1,289)	(1,004)	(3,774)
Changes in fair value of derivative liabilities	114	760	66	2,115
Loss on extinguishment of debt	(25)	(860)	(2,400)	(2,592)
Other income	5	2	30	2
<b>Total other expense</b>	<b>(29)</b>	<b>(1,309)</b>	<b>(2,889)</b>	<b>(3,984)</b>
<b>Earnings before income taxes</b>	<b>4,280</b>	<b>27,858</b>	<b>7,927</b>	<b>15,516</b>
<b>Income tax expense</b>	<b>58</b>		<b>782</b>	
<b>Net income</b>	<b>\$ 4,222</b>	<b>\$ 27,858</b>	<b>\$ 7,145</b>	<b>\$ 15,516</b>
<b>Income per common share:</b>				
Basic	\$ 0.09	\$ 0.65	\$ 0.15	\$ 0.37
Diluted	\$ 0.08	\$ 0.39	\$ 0.15	\$ 0.13
<b>Weighted-average number of common shares outstanding:</b>				
Basic	48,515,071	42,900,269	47,011,243	42,035,025
Diluted	51,590,797	50,825,633	51,059,466	50,378,186

See accompanying notes.



Table of Contents**Supernus Pharmaceuticals, Inc.****Consolidated Statements of Comprehensive Income****(in thousands)**

	<b>Three Months ended September 30,</b>		<b>Nine Months ended September 30,</b>	
	<b>2015</b>	<b>2014</b>	<b>2015</b>	<b>2014</b>
	<b>(unaudited)</b>		<b>(unaudited)</b>	
Net income	\$ 4,222	\$ 27,858	\$ 7,145	\$ 15,516
Other comprehensive (loss) income:				
Unrealized net gain (loss) on marketable securities	44	(36)	47	(35)
Other comprehensive income (loss):	44	(36)	47	(35)
Comprehensive income	\$ 4,266	\$ 27,822	\$ 7,192	\$ 15,481

See accompanying notes.

Table of Contents

## Supernus Pharmaceuticals, Inc.

## Consolidated Statements of Cash Flows

(in thousands)

	Nine Months ended September 30,	
	2015	2014
	(unaudited)	
<b>Cash flows from operating activities</b>		
Net income	\$ 7,145	\$ 15,516
Adjustments to reconcile net income to net cash provided by operating activities:		
Loss on extinguishment of debt	2,400	2,592
Change in fair value of derivative liability	(66)	(2,115)
Unrealized (gain) loss on marketable securities	47	(35)
Depreciation and amortization	651	701
Amortization of deferred financing costs and debt discount	646	1,599
Share-based compensation expense	3,152	2,023
Changes in operating assets and liabilities:		
Accounts receivable	(6,334)	(10,249)
Inventories	(1,301)	(3,993)
Prepaid expenses and other assets	(2,793)	(1,256)
Accounts payable	949	1,569
Accrued sales deductions	10,359	(4,354)
Accrued expenses	(2,538)	6,454
Deferred product revenue, net		(7,882)
Deferred licensing revenue	(107)	(168)
Other non-current liabilities	(21)	337
<b>Net cash provided by operating activities</b>	<b>12,189</b>	<b>739</b>
<b>Cash flows from investing activities</b>		
Purchases of marketable securities	(51,289)	(34,566)
Sales and maturities of marketable securities	33,671	41,987
Purchases of property and equipment	(1,240)	(475)
Deferred legal fees	(4,500)	(3,149)
<b>Net cash (used in) provided by investing activities</b>	<b>(23,358)</b>	<b>3,797</b>
<b>Cash flows from financing activities</b>		
Proceeds from issuance of common stock	1,067	265
Cash settlement of debt to equity conversion		(1)
<b>Net cash provided by financing activities</b>	<b>1,067</b>	<b>264</b>
Net change in cash and cash equivalents	(10,102)	4,800
Cash and cash equivalents at beginning of period	36,396	32,980
Cash and cash equivalents at end of period	\$ 26,294	\$ 37,780
Supplemental cash flow information:		
Cash paid for interest	\$ 504	\$ 1,502
Noncash financial activity:		
Conversion of convertible notes and interest make-whole	\$ 26,019	\$ 14,887
Exercise of warrants	\$ 652	\$
Deferred legal fees included in accrued expenses	\$ 6,866	\$

See accompanying notes.

Table of Contents

**Supernus Pharmaceuticals, Inc.**

**Notes to Consolidated Financial Statements**

**For the Three and Nine Months ended September 30, 2015 and 2014**

**(unaudited)**

**1. Organization and Business**

Supernus Pharmaceuticals, Inc. (the Company) is a specialty pharmaceutical company focused on developing and commercializing products for the treatment of central nervous system (CNS) diseases, including neurological and psychiatric disorders. The Company markets two epilepsy products, Oxtellar XR and Trokendi XR, and has several proprietary product candidates in clinical development that address the psychiatry market.

The Company commenced the commercialization of Oxtellar XR and Trokendi XR in 2013.

**2. Summary of Significant Accounting Policies**

**Basis of Presentation**

The Company's unaudited consolidated financial statements include the accounts of Supernus Pharmaceuticals, Inc. and Supernus Europe Ltd. These are collectively referred to herein as "Supernus" or "the Company." All significant intercompany transactions and balances have been eliminated in consolidation. The Company's unaudited consolidated financial statements have been prepared in accordance with the requirements of the U.S. Securities and Exchange Commission (SEC) for interim financial information.

As permitted under Generally Accepted Accounting Principles in the United States (U.S. GAAP), certain notes and other information have been omitted from the interim unaudited consolidated financial statements presented in this Quarterly Report on Form 10-Q. Therefore, these financial statements should be read in conjunction with the Company's Annual Report on Form 10-K for the year ended December 31, 2014 filed with the SEC.

In the opinion of management, the consolidated financial statements reflect all adjustments necessary to fairly present the Company's financial position, results of operations, and cash flows for the periods presented. These adjustments are of a normal recurring nature. The Company currently operates in one business segment.

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The results of operations for the three and nine months ended September 30, 2015 are not necessarily indicative of the Company's future financial results.

### Marketable Securities

Marketable securities consist of investments in U.S. Treasuries, various U.S. governmental agency debt securities, corporate bonds and other fixed income securities. The Company's investments are classified as available for sale. Such securities are carried at estimated fair value, with any unrealized holding gains or losses reported, net of any tax effects reported, as accumulated other comprehensive income, which is a separate component of stockholders' equity. Realized gains and losses, and declines in value judged to be other-than-temporary, if any, are included in consolidated results of operations. A decline in the market value of any available for sale security below cost that is deemed to be other-than-temporary results in a reduction in fair value, which is charged to earnings in that period, and a new cost basis for the security is established. Dividend and interest income is recognized when earned. The cost of securities sold is calculated using the specific identification method. The Company places all investments with highly rated government or private sector or industrial financial institutions whose debt is rated as investment grade. The Company classifies all available-for-sale marketable securities with maturities greater than one year from the balance sheet date as non-current assets.

The Company established the Supernus Supplemental Executive Retirement Plan (SERP) for the sole purpose of receiving funds for executives from a previous SERP and providing a continuing deferral program under the Supernus SERP. As of September 30, 2015, the fair value of the SERP was \$267,000 and was held in cash securities. As of December 30, 2014, the estimated fair value of the mutual fund investment securities within the SERP was approximately \$305,000. The fair value of these assets is included within other non-current assets on the consolidated balance sheets. A corresponding noncurrent liability is also included in the consolidated balance sheets to reflect the Company's obligation for the SERP. The Company has not made, and has no plans to make, contributions to the SERP. The securities are restricted in nature and can only be used for purposes of paying benefits under the SERP.

Table of Contents

**Accounts Receivable, net**

Accounts receivable are reported on the consolidated balance sheets at outstanding amounts, less an allowance for doubtful accounts and discounts. The Company extends credit without requiring collateral. The Company writes off uncollectible receivables when the likelihood of collection is remote. The Company evaluates the collectability of accounts receivable on a regular basis. An allowance, when needed, is based upon various factors including the financial condition and payment history of customers, an overall review of collections experience on other accounts, and economic factors or events expected to affect future collections experience. No accounts have been written off in 2015 and 2014. The Company recorded an allowance of approximately \$4.7 million and \$4.1 million for estimated sales discounts as of September 30, 2015 and December 31, 2014, respectively.

**Revenue Recognition**

Revenue from product sales is recognized when persuasive evidence of an arrangement exists; delivery has occurred and title to the product and associated risk of loss has passed to the customer; the price is fixed or determinable; collection from the customer has been reasonably assured; all performance obligations have been met; and returns and allowances can be reasonably estimated. Product sales are recorded net of estimated rebates, chargebacks, discounts, co-pay assistance and other deductions as well as estimated product returns (collectively, sales deductions ).

Our products are distributed through wholesalers and pharmaceutical distributors. Each of these wholesalers and distributors will take title and ownership to the product upon physical receipt of the product and then distribute our products to pharmacies. For the three and nine months ended September 30, 2015, the revenue for Oxtellar XR and Trokendi XR was recognized contemporaneously upon shipment of finished products to wholesalers, net of allowances for estimated sales deductions and returns.

Beginning in the second quarter of 2014, the Company began recognizing revenue for Trokendi XR, net of estimated sales deductions, at the time of shipments to wholesalers. Prior to this change in accounting estimate, the Company recognized revenue for Trokendi XR once delivery had occurred and all sales deductions were known or reasonably estimated. The effect of this change was to increase net product sales by \$7.9 million which represent the impact of the deferred product revenue at December 31, 2013, and cost of product sales by \$0.5 million for the nine months ended September 30, 2014.

During the three and nine months ended September 30, 2015, the Company recorded a \$2.9 million reduction to net revenue related to a change in estimate associated with its accrued sales deductions of \$18.8 million at September 30, 2015. The change in estimate reflects returns experience associated with our initial launch shipments, which have now passed their expiry dating.

**Sales Deductions**

Allowances for estimated sales deductions are provided for the following:

- **Rebates.** Rebates include mandated discounts under the Medicaid Drug Rebate Program, the Medicare coverage gap program, as well as negotiated discounts with commercial health-care providers. Rebates are amounts owed after the final dispensing of products to a benefit plan participant and are based upon contractual agreements or legal requirements with the public sector (e.g. Medicaid) and with private sector benefit providers. The allowance for rebates is based on statutory and contractual discount rates and expected claimed rebates paid based on a plan provider's utilization. Rebates are generally invoiced and paid quarterly in arrears so that the accrual balance consists of an estimate of the amount expected to be incurred for the current quarter's activity, plus an accrual balance for known prior quarters' unpaid rebates. If actual future rebates vary from estimates, we may need to adjust prior period accruals, which would affect revenue in the period of adjustment.
- **Chargebacks.** Chargebacks are discounts that occur when contracted customers purchase directly from an intermediary distributor or wholesaler. Contracted customers, which currently consist primarily of Public Health Service institutions and Federal government entities purchasing via the Federal Supply Schedule, generally purchase the product at a discounted price. The distributor or wholesaler, in turn, charges back the difference between the price initially paid by the distributor or wholesaler and the discounted price paid to the distributor or wholesaler by the customer. The allowance for distributor/wholesaler chargebacks is based on known sales to contracted customers.
- **Distributor/Wholesaler deductions and discounts.** U.S. specialty distributors and wholesalers are offered various forms of consideration including allowances, service fees and prompt payment discounts as consideration for distributing our products. Distributor allowances and service fees arise from contractual agreements with distributors and are generally a percentage of the purchase price paid by the distributors and wholesalers. Wholesale customers are offered a prompt pay discount for payment within a specified period.
- **Co-pay assistance.** Patients who pay in cash or have commercial insurance and meet certain eligibility requirements may receive co-pay assistance from the Company. The intent of this program is to reduce the patient's out of pocket costs.

Table of Contents

Liabilities for co-pay assistance are based on actual program participation and estimates of program redemption using data provided by third-party administrators.

- **Returns.** Sales of our products are not subject to a general right of return; however, the Company will accept product that is damaged or defective when shipped directly from our warehouse and expired product six months prior and up to 12 months subsequent to its expiry date. Product that has been used to fill patient prescriptions is no longer subject to any right of return.

**Milestone Payments**

Milestone payments on licensing agreements are recognized as revenue when the collaborative partner acknowledges completion of the milestone and substantive effort was necessary to achieve the milestone. Management may recognize revenue contingent upon the achievement of a milestone in its entirety in the period in which the milestone is achieved only if the milestone meets all the criteria to be considered substantive. The Company recorded zero and \$750,000 of milestone revenue during the three and nine months ended September 30, 2015, respectively, and zero and \$2.0 million of milestone revenue during the three and nine months ended September 30, 2014, respectively.

**Cost of Product Sales**

The cost of product sales consists primarily of materials, third-party manufacturing costs, freight and distribution costs, allocation of labor, quality control and assurance, and other manufacturing overhead costs.

**Income Taxes**

The Company utilizes the asset and liability method of accounting for income taxes. Under this method, deferred tax assets and liabilities are determined based on differences between financial reporting and tax reporting bases of assets and liabilities and are measured using enacted tax rates and laws that are expected to be in effect when the differences are expected to reverse. Valuation allowances are established to reduce deferred tax assets to the amounts expected to be realized.

The Company accounts for uncertain tax positions in its consolidated financial statements when it is more-likely-than-not that the position will be sustained upon examination by the tax authorities. Such tax positions must initially and subsequently be measured as the largest amount of tax benefit that has a greater than 50% likelihood of being realized upon ultimate settlement with the tax authority assuming full knowledge of the position and relevant facts. The Company's policy is to recognize any interest and penalties related to income taxes in income tax expense.

**Recently Issued Accounting Pronouncements**

In April 2015, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) No. 2015-05, Customer's Accounting for Fees Paid in a Cloud Computing Arrangement. This ASU provides guidance about whether a cloud computing arrangement includes a software license. If a cloud computing arrangement includes a software license, then the software license element of the arrangement is consistent with the acquisition of other software licenses. If a cloud computing arrangement does not include a software license, then it should account for the arrangement as a service contract. The amendments in this ASU are effective for financial statements issued for annual periods, including interim periods within those annual periods, beginning after December 15, 2015. The Company has elected to adopt the amendment early. The adoption of this standard had no impact on the Company's financial results.

In July 2015, the FASB issued ASU 2015-11, Inventory (Topic 330): Simplifying the Measurement of Inventory. Under this new guidance, entities that measure inventory using any method other than last-in, first-out or the retail inventory method will be required to measure inventory at the lower of cost and net realizable value. The amendments in this ASU, which should be applied prospectively, are effective for annual and interim periods beginning after December 15, 2016. Early adoption is permitted. The Company is currently in the process of evaluating the impact of adoption of ASU No. 2015-11 on our consolidated financial statements and related disclosures.

In April 2015, the FASB issued ASU No. 2015-03, Simplifying the Presentation of Debt Issuance Costs. This ASU more closely aligns the treatment of debt issuance costs with debt discounts and premiums and requires debt issuance costs be presented as a direct deduction from the carrying amount of the related debt. The amendments in this ASU are effective for financial statements issued for fiscal years beginning after December 15, 2015 and interim periods within those fiscal years. This guidance should be applied on a retrospective basis and the Company will be required to comply with the applicable disclosures for a change in accounting principle. Presently, the Company does not expect the adoption of ASU 2015-03 to have a material impact on our consolidated financial statements and accompanying notes.

Table of Contents

In August 2014, the FASB issued ASU No. 2014-15 *Disclosure of Uncertainties About an Entity's Ability to Continue as a Going Concern*. The new standard requires management to perform interim and annual assessments of an entity's ability to continue to meet its obligations as they become due within one year after the date that the financial statements are issued. ASU 2014-15 is effective for annual periods ending after December 15, 2016, and interim periods thereafter, with early adoption permitted. We do not believe the adoption of the new standard will have a significant impact on our consolidated financial statements.

In May 2014, the FASB issued ASU No. 2014-09, *Revenue from Contracts with Customers*. ASU 2014-09 will eliminate transaction- and industry-specific revenue recognition guidance under current GAAP and replace it with a principles-based approach for determining revenue recognition. ASU 2014-09 will require that companies recognize revenue based on the value of transferred goods or services as they occur in the contract. The ASU also will require additional disclosure about the nature, amount, timing and uncertainty of revenue and cash flows arising from customer contracts, including significant judgments and changes in judgments and assets recognized from costs incurred to obtain or fulfill a contract. ASU 2014-09 is effective for annual reporting periods beginning after December 15, 2016. The FASB has voted to approve a one-year deferral, changing the effective date to annual reporting periods beginning after December 15, 2017, with early adoption being permitted for periods ending after December 15, 2016. Earlier adoption is not permitted. Entities can transition to the standard either retrospectively or as a cumulative effect adjustment as of the date of adoption. Presently, the Company is assessing what effect the adoption of ASU 2014-09 will have on our consolidated financial statements and accompanying notes.

The Company has evaluated all other ASUs issued through the date the consolidated financials were issued and believes that no other ASU will have a material impact on the Company's consolidated financial statements.

### **3. Fair Value of Financial Instruments**

The fair value of an asset or liability should represent the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants. Such transactions to sell an asset or transfer a liability are assumed to occur in the principal or most advantageous market for the asset or liability. Accordingly, fair value is determined based on a hypothetical transaction at the measurement date, considered from the perspective of a market participant rather than from a reporting entity's perspective.

The Company reports assets and liabilities that are measured at fair value using a three level fair value hierarchy that prioritizes the inputs used to measure fair value. This hierarchy maximizes the use of observable inputs and minimizes the use of unobservable inputs. The three levels of inputs used to measure fair value are as follows:

- **Level 1** Inputs are unadjusted quoted prices in active markets for identical assets that the Company has the ability to access at the measurement date.
- **Level 2** Inputs are quoted prices for similar assets and liabilities in active markets, quoted prices for identical or similar assets or liabilities in markets that are not active, inputs other than quoted prices that are observable for the asset or liability (interest rates, yield curves, etc.) and inputs that are derived principally from or corroborated by observable market data by correlation or other means (market corroborated inputs).

- Level 3 Unobservable inputs that reflect the Company's own assumptions, based on the best information available, including the Company's own data.

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Table of Contents

In accordance with the fair value hierarchy described above, the following tables show the fair value of the Company's financial assets and liabilities that are required to be measured at fair value, in thousands:

	Fair Value Measurements at September 30, 2015 (unaudited)			
	Total Fair Value at September 30, 2015	Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
<b>Assets:</b>				
Cash and cash equivalents	\$ 26,294	\$ 26,294	\$	\$
Marketable securities	31,408		31,408	
Long term marketable securities	43,967		43,967	
Marketable securities - restricted (SERP)	267	267		
Total assets at fair value	\$ 101,936	\$ 26,561	\$ 75,375	\$
<b>Liabilities:</b>				
Derivative liabilities	\$ 1,156	\$	\$	\$ 1,156

	Fair Value Measurements at December 31, 2014			
	Total Fair Value at December 31, 2014	Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
<b>Assets:</b>				
Cash and cash equivalents	\$ 36,396	\$ 36,396	\$	\$
Marketable securities	37,940		37,940	
Long term marketable securities	19,816		19,816	
Marketable securities - restricted (SERP)	305		305	
Total assets at fair value	\$ 94,457	\$ 36,396	\$ 58,061	\$
<b>Liabilities:</b>				
Derivative liabilities	\$ 6,564	\$	\$	\$ 6,564

The fair value of the restricted marketable securities is included within other non-current assets in the consolidated balance sheets.

The Company's Level 1 assets include money market funds and U.S. Treasury and government agency debt securities with quoted prices in active markets.

Level 2 assets include the SERP (Supplemental Executive Retirement Plan) assets, commercial paper and investment grade corporate bonds and other fixed income securities.

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Level 3 liabilities include the estimated fair value of the interest make-whole liability associated with the Company's 7.5% Convertible Senior Secured Notes due 2019 (the Notes) and outstanding warrants to purchase common stock, which are recorded as derivative liabilities. During the three months ended September 30, 2015, all of the outstanding warrants to purchase common stock were exercised. As of September 30, 2015 there remain no warrants outstanding.

The fair value of the interest make-whole liability of the Notes was calculated using a binomial-lattice model with the following key assumptions as of September 30, 2015, unaudited:

Volatility	45%
Stock Price as of September 30, 2015	\$14.03 per share
Credit Spread	1851 bps
Term	1.6 years
Dividend Yield	0.0%

Table of Contents

Significant changes to these assumptions could result in increases/decreases to the fair value of the derivative liabilities.

Changes in the fair value of the warrants and the interest make-whole liability are recognized as a component of Other Income (Expense) in the Consolidated Statements of Operations. The following table presents information about the Company's Level 3 liabilities as of December 31, 2014 and September 30, 2015 that are included in the Non-Current Liabilities section of the Consolidated Balance Sheets, in thousands:

	<b>Nine Months ended September 30, 2015 (unaudited)</b>	
Balance at December 31, 2014	\$	6,564
Changes in fair value of derivative liabilities included in earnings		(66)
Reduction due to conversion of debt to equity		(4,690)
Cashless exercise of common stock warrants		(652)
Balance at September 30, 2015	\$	1,156

The carrying value, face value and estimated fair value of the Notes was approximately \$8.1 million, \$9.7 million and \$27.3 million, respectively, as of September 30, 2015. The fair value was estimated based on actual trade information as well as quoted prices provided by bond traders, which would be characterized within Level 2 of the fair value hierarchy. This fair value amount gives recognition to the value of the interest make-whole liability and the value of the conversion option. These items have been accounted for as derivative liabilities and additional paid-in-capital, respectively.

The carrying amounts of other financial instruments, including accounts receivable, accounts payable and accrued expenses approximate fair value due to their short-term maturities.

Unrestricted marketable securities held by the Company were as follows, in thousands:

At September 30, 2015 (unaudited):

Available for Sale	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
Corporate debt securities	\$ 75,482	\$ 23	\$ (130)	\$ 75,375

At December 31, 2014:

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<b>Available for Sale</b>	<b>Amortized Cost</b>	<b>Gross Unrealized Gains</b>	<b>Gross Unrealized Losses</b>	<b>Fair Value</b>
Corporate debt securities	\$ 57,910	\$ 4	\$ (158)	\$ 57,756

Table of Contents

The contractual maturities of the unrestricted available for sale marketable securities held by the Company were as follows, in thousands:

	<b>September 30, 2015 (unaudited)</b>
Less Than 1 Year	\$ 31,408
1-5 years	43,967
Greater Than 5 Years	
Total	\$ 75,375

The Company has not experienced any other-than-temporary losses on its marketable securities and restricted marketable securities. The cost of securities sold is calculated using the specific identification method.

**4. Inventories**

Inventories consist of the following, in thousands:

	<b>September 30, 2015 (unaudited)</b>	<b>December 31, 2014</b>
Raw materials	\$ 3,604	\$ 2,491
Work in process	4,051	6,328
Finished goods	7,087	4,622
	\$ 14,742	\$ 13,441

**5. Property and Equipment**

Property and equipment consist of the following, in thousands:

	<b>September 30, 2015 (unaudited)</b>	<b>December 31, 2014</b>
Computer equipment	\$ 1,039	\$ 862
Software	663	254
Lab equipment and furniture	5,634	5,194
Leasehold improvements	2,642	2,428
	9,978	8,738
Less accumulated depreciation and amortization	(6,768)	(6,290)
	\$ 3,210	\$ 2,448

Depreciation and amortization expense on property and equipment was approximately \$162,000 and \$478,000 for the three and nine months ended September 30, 2015, respectively, and \$184,000 and \$529,000 for the three and nine months ended September 30, 2014, respectively.

**6. Intangible Assets and Deferred Legal Fees**

The Company purchased certain patents from Shire Laboratories, Inc. pursuant to a 2005 purchase agreement. These patents are being amortized over the weighted average life of the patents purchased in that transaction. Deferred legal fees have been incurred in connection with litigation related to patents for Oxtellar XR and Trokendi XR (see Part II, Item I Legal Proceedings in this Quarterly

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Table of Contents

Report on Form 10-Q). The following sets forth the gross carrying amount and related accumulated amortization of these intangible assets, in thousands:

	Weighted-Average Life	September 30, 2015 (unaudited)		December 31, 2014	
		Gross Carrying Amount	Accumulated Amortization	Gross Carrying Amount	Accumulated Amortization
Purchased patents	10.0	\$ 2,292	\$ 2,240	\$ 2,292	