TIVO INC
Form 10-Q
June 09, 2005
Table of Contents

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended April 30, 2005.

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 000-27141

TIVO INC.

(Exact name of registrant as specified in its charter)

Delaware	**77-0463167**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**

2160 Gold Street, P.O. Box 2160, Alviso, CA 95002

(Address of principal executive offices including zip code)

(408) 519-9100

(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 x NO ¨.

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act). YES x NO ¨.

The number of shares outstanding of the registrant s common stock, $0.001 par value, was 83,250,897 as of May 27, 2005.

Table of Contents

TiVo Inc.

Form 10-Q

For the Fiscal Quarter Ended April 30, 2005

Table of Contents

Except as the context otherwise requires, the terms TiVo , Registrant , company , we , us , or our as used herein are references to TiVo Inc. a consolidated subsidiaries.

Table of Contents

PART I : FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

TIVO INC.

CONDENSED CONSOLIDATED BALANCE SHEETS

(In thousands, except share amounts)

(unaudited)

	April 30, 2005	January 31, 2005
ASSETS		
CURRENT ASSETS		
Cash and cash equivalents	$ 90,791	$ 87,245
Short-term investments	14,700	19,100
Accounts receivable, net of allowance for doubtful accounts of $113 and $104	8,128	25,879
Finished goods inventories	18,983	12,103
Prepaid expenses and other, current	3,790	4,476
Total current assets	136,392	148,803
LONG-TERM ASSETS		
Property and equipment, net	7,272	7,780
Capitalized software and intangible assets, net	5,990	2,231
Prepaid expenses and other, long-term	860	1,238
Total long-term assets	14,122	11,249
Total assets	$ 150,514	$ 160,052
LIABILITIES AND STOCKHOLDERS DEFICIT		
LIABILITIES		
CURRENT LIABILITIES		
Bank line of credit	$ 6,000	$ 4,500
Accounts payable	12,246	18,736
Accrued liabilities	22,615	33,173
Deferred revenue, current	47,819	42,017
Total current liabilities	88,680	98,426
LONG-TERM LIABILITIES		
Deferred revenue, long-term	62,117	63,131
Deferred rent and other	830	1,187
Total long-term liabilities	62,947	64,318

Total liabilities	151,627	162,744
COMMITMENTS AND CONTINGENCIES (see Note 8)		
STOCKHOLDERS DEFICIT		
Preferred stock, par value $0.001: Authorized shares are 10,000,000 Issued and outstanding shares none		
Common stock, par value $0.001: Authorized shares are 150,000,000 Issued and outstanding shares are 82,838,445 and 82,280,876, respectively	83	82
Additional paid-in capital	656,979	654,746
Deferred compensation	(226)	(428)
Accumulated deficit	(657,949)	(657,092)
Total stockholders deficit	(1,113)	(2,692)
Total liabilities and stockholders deficit	$ 150,514	$ 160,052

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

3

Table of Contents

TIVO INC.

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

(In thousands, except share amounts)

(unaudited)

	Three Months Ended April 30,	
	2005	2004
Revenues		
Service and technology revenues (includes $5,087 from related parties for the three months ended April 30, 2004)	$ 40,020	$ 25,174
Hardware revenues	10,526	14,337
Rebates, revenue share and other payments to channel	(3,638)	(4,988)
Net revenues	46,908	34,523
Costs of revenues		
Costs of service and technology revenues	8,866	7,555
Cost of hardware revenues	15,642	16,850
Total cost of revenues	24,508	24,405
Gross margin	22,400	10,118
Research and development	10,904	8,999
Sales and marketing (includes $816 to related parties for the three months ended April 30, 2004)	6,830	5,600
General and administrative	6,138	4,239
Total operating expenses	23,872	18,838
Loss from operations	(1,472)	(8,720)
Interest income	624	327
Interest expense and other	(1)	(656)
Loss before income taxes	(849)	(9,049)
Provision for income taxes	(8)	(18)
Net loss	$ (857)	$ (9,067)
Net loss per common share basic and diluted	$ (0.01)	$ (0.11)
Weighted average common shares used to calculate - basic and diluted	82,380,871	79,799,865

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

Table of Contents

TIVO INC.

CONDENSED CONSOLIDATED STATEMENT OF STOCKHOLDERS DEFICIT

(In thousands, except share amounts)

(unaudited)

	Common Stock				Accumulated	
	Shares	Amount	Additional Paid-In Capital	Deferred Compensation	Deficit	Total
BALANCE JANUARY 31, 2005	82,280,876	$ 82	$ 654,746	$ (428)	$ (657,092)	$ (2,692)
Issuance of common stock related to exercise of common stock options	342,424	1	1,318			1,319
Issuance of common stock related to employee stock purchase plan	245,655		1,175			1,175
Retirement due to forfeiture of unvested restricted common stock	(30,510)		(260)	260		0
Reversal of deferred compensation expense due to forfeiture of unvested restricted common stock				(216)		(216)
Recognition of stock based compensation expense				158		158
Net loss					(857)	(857)
BALANCE APRIL 30, 2005	82,838,445	$ 83	$ 656,979	$ (226)	$ (657,949)	$ (1,113)

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

Table of Contents

TIVO INC.

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(In thousands)

(unaudited)

	Three Months Ended April 30,	
	2005	**2004**
CASH FLOWS FROM OPERATING ACTIVITIES		
Net loss	$ (857)	$ (9,067)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization of property and equipment and intangibles	1,424	1,223
Loss on disposal of fixed assets	3	
Non-cash interest expense		464
Recognition of stock-based compensation expense	(58)	298
Changes in assets and liabilities:		
Accounts receivable, net (change includes $(301) from related parties for the three months ended April 30, 2004)	17,751	2,044
Finished goods inventories	(6,880)	3,412
Prepaid expenses and other, current (change includes $986 to related parties for the three months ended April 30, 2004)	686	604
Prepaid expenses and other, long-term (change includes $1,426 to related parties for the three months ended April 30, 2004)	378	760
Accounts payable	(6,490)	(2,350)
Accrued liabilities (change includes $(623) to related parties for the three months ended April 30, 2004)	(10,558)	(4,024)
Deferred revenue, current (change includes $(1,739) from related parties for the three months ended April 30, 2004)	5,802	(791)
Deferred revenue, long-term	(1,014)	1,183
Deferred rent and other long-term liabilities	(357)	(96)
Net cash used in operating activities	(170)	(6,340)
CASH FLOWS FROM INVESTING ACTIVITIES		
Purchases of short-term investments	(1,025)	(14,750)
Sales of short-term investments	5,425	4,350
Acquisition of property and equipment, net	(763)	(750)
Acquisition of capitalized software and intangibles	(3,915)	
Net cash used in investing activities	(278)	(11,150)
CASH FLOWS FROM FINANCING ACTIVITIES		
Borrowing under bank line of credit	1,500	
Proceeds from issuance of common stock related to employee stock purchase plan	1,175	1,228
Proceeds from issuance of common stock related to exercise of common stock options	1,319	987
Net cash provided by financing activities	3,994	2,215

NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS	3,546	(15,275)

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

Table of Contents

TIVO INC.

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (CONTINUED)

(In thousands)

(unaudited)

	Three Months Ended April 30, 2005	Three Months Ended April 30, 2004
CASH AND CASH EQUIVALENTS:		
Balance at beginning of period	87,245	138,210
Balance at end of period	$ 90,791	$ 122,935
SUPPLEMENTAL DISCLOSURE OF CASH AND NON-CASH FLOW INFORMATION		
Cash paid for interest	$ (1)	$ (195)
SUPPLEMENTAL DISCLOSURE OF RESTRICTED CASH AND OTHER NON-CASH INVESTING AND FINANCING INFORMATION		
Adjustment to deferred compensation as a result of retirement due to forfeiture of unvested restricted common stock	(260)	(144)
Issuance of common stock for purchase of patents rights.		(306)

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

Table of Contents

TIVO INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

(Unaudited)

1. NATURE OF OPERATIONS

TiVo Inc. (the Company or TiVo) was incorporated in August 1997 as a Delaware corporation and is located in Alviso, California. On August 21, 2000, TiVo (UK) Limited, a wholly owned subsidiary of TiVo Inc., was incorporated in the United Kingdom. On October 9, 2001, the Company formed a subsidiary, TiVo International, Inc., also a Delaware corporation. On July 16, 2004, TiVo Intl. II, Inc., a wholly owned subsidiary of TiVo Inc., was incorporated in the Cayman Islands. On March 22, 2005, TiVo Brands LLC, a wholly owned subsidiary of TiVo Inc., was incorporated in the State of Delaware as a holding entity for all of the Company s trademarks. TiVo is a provider of technology and services for digital video recorders, or DVRs. The Company has developed a subscription-based television service (the TiVo service) that improves home entertainment by providing consumers with an easy way to record, watch, and control television. The TiVo service also offers the television industry a platform for advertisers, content delivery, and audience measurement research. The TiVo service requires a TiVo-enabled DVR or set-top box. These may be purchased at major consumer electronics retailers throughout the United States or through the Company s website.

The Company continues to be subject to a number of risks, including delays in product and service developments; competitive service offerings; lack of market acceptance and uncertainty of future profitability; the dependence on third parties for manufacturing, marketing, and sales support; the intellectual property claims against the Company; and dependence on its relationship with DIRECTV for subscription growth. The Company conducts its operations through one reportable segment. The Company anticipates that its business will continue to be seasonal and expects to generate a significant number of its annual new subscriptions during and immediately after the holiday shopping season.

Unaudited Interim Condensed Consolidated Financial Statements

The accompanying unaudited interim condensed consolidated financial statements have been prepared in accordance with generally accepted accounting principles for interim financial information, the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, the unaudited interim condensed consolidated financial statements do not contain all of the information and footnotes required by generally accepted accounting principles for complete audited annual financial statements. In the opinion of management, the accompanying unaudited condensed consolidated financial statements include all adjustments, consisting only of normal recurring adjustments, necessary for the fair presentation of the Company s financial position as of April 30, 2005 and January 31, 2005 and the results of operations for the three-month periods ended April 30, 2005 and 2004 and condensed consolidated statements of cash flows for the three-month periods ended April 30, 2005 and 2004. Additionally, included is the unaudited statement of stockholders equity for the three-month period ended April 30, 2005. These condensed consolidated financial statements should be read in conjunction with the Company s audited consolidated financial statements as of January 31, 2005 and 2004, including the notes thereto, included in the Company s 2005 Annual Report on Form 10-K. Operating results for the three-month period ended April 30, 2005 are not necessarily indicative of results that may be expected for the year ending January 31, 2006.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation

The condensed consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. All inter-company accounts and transactions have been eliminated in consolidation.

Table of Contents

Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions. Actual results could differ from those estimates.

Reclassifications

Certain reclassifications have been made to prior periods financial statements to conform with the current period presentations. The Company reclassified its auction rate securities from cash and cash equivalents to short-term investments for the fiscal year ended January 31, 2004 and three months ended April 30, 2004.

Cash and Cash Equivalents

Cash and cash equivalents include all highly liquid investments with original maturities of three months or less. The carrying value of the cash and cash equivalents approximates their fair value.

Short-term Investments

Short-term investments include corporate debt securities and U.S. Government Agency debt securities. Marketable securities are classified as available-for-sale and are carried at fair value. The Company s marketable securities are reviewed each reporting period for declines in value that are considered to be other-than temporary and, if appropriate, written down to their estimated fair value. Realized gains and losses and declines in value judged to be other-than-temporary on available-for-sale securities are included in the Company s consolidated statement of operations. Unrealized gains and losses would be included in other comprehensive income (loss). The cost of securities sold is based on the specific identification method. Interest and dividends on securities classified as available-for-sale are included in interest income in the consolidated statement of operations.

Finished Goods Inventories

TiVo maintains a finished goods inventory of the TiVo-enabled DVRs throughout the year. Inventories are stated at the lower of cost or net realizable value on an aggregate basis, with cost determined using the first-in, first-out method.

The Company performs a detailed assessment of inventory at each balance sheet date, which includes a review of, among other factors, demand requirements and market conditions. Based on this analysis, the Company records adjustments, when appropriate, to reflect inventory at lower of cost or market. During three months ended April 30, 2005, as a result of such assessment, the Company recorded a charge to costs of goods sold of $3.2 million related to losses from inventory write-downs and inventory that it is committed to purchase.

Property and Equipment

Property and equipment are stated at cost. Depreciation is computed using the straight-line method over estimated useful lives as follows:

Furniture and fixtures	3-5 years
Computer and office equipment	3-5 years
Lab equipment	3 years
Leasehold improvements	The shorter of 7 years or the life of the lease
Capitalized software for internal use	1-5 years

Maintenance and repair expenditures are expensed as incurred.

Table of Contents

Capitalized Software

Costs of computer software to be sold, leased or otherwise marketed have been accounted for in accordance with SFAS No. 86, Accounting for the Costs of Computer Software to Be Sold, Leased, or Otherwise Marketed. The Company achieves technological feasibility upon development of a working model. The period between the development of a working model and the release of the final product to customers is short and, therefore, the development costs incurred during this short period are immaterial and, as such, are not capitalized.

Intangible Assets

Purchased intangible assets include intellectual property such as patent rights carried at cost less accumulated amortization. Useful lives generally range from three years to seven years.

Deferred Rent and Other Long-Term Liabilities

Deferred rent and other long-term liabilities consist primarily of accrued rent resulting from the recognition of the escalating lease payments related to rent and related property taxes and insurance for the Company s corporate headquarters office buildings. Additionally included are liabilities as a result of the Company s TiVo rewards program, a customer loyalty program.

Revenue Recognition and Deferred Revenue

During the three months ended April 30, 2005 and 2004, the Company generated service revenues from fees for providing the TiVo service to consumers. The Company also generated technology revenues from providing licensing and engineering professional services to other entities that were creating products that provide DVR functionality. In addition, in an effort to increase its subscription growth, the Company manufactured and distributed TiVo branded DVRs. This effort resulted in revenues from the sale of hardware products that enable the TiVo service.

Service Revenues. Included in service revenues are revenues from monthly, annual, and product lifetime subscription fees to the TiVo service. Monthly and annual subscription revenues are recognized over the period benefited. Subscription revenues from product lifetime subscriptions are recognized ratably over a four-year period, the Company s estimate of the useful life of the DVR.

Technology Revenues. The Company recognizes technology revenues under technology license and engineering professional services agreements in accordance with the American Institute of Certified Public Accountant s Statement of Position (SOP), 97-2, Software Revenue Recognition, as amended. These agreements contain multiple-elements in which vendor specific objective evidence (VSOE) of fair value is required for all undelivered elements in order to recognize revenue related to the delivered element. Elements included in the Company s arrangements may include technology licenses and associated maintenance and support, engineering professional services and other services. The timing of revenue recognition related to these transactions will depend, in part, on whether the Company can establish VSOE for undelivered elements and on how these transactions are structured. As such, revenue recognition may not correspond to the timing of related cash flows or the Company s work effort.

In arrangements which include engineering professional services that are essential to the functionality of the software or involve significant customization or modification of the software, the Company recognizes revenue using the percentage-of-completion method, as described in SOP 81-1 Accounting for Performance of Construction-Type and Certain Production-Type Contracts, if the Company believes it is able to make reasonably dependable estimates of the extent of progress toward completion. The Company measures progress toward completion based on the ratio of costs incurred to date to total estimated costs of the project, an input method. These estimates are assessed continually during the term of the contract and revisions are reflected when the conditions become known. In some cases, the Company has accepted engineering professional services contracts that were expected to be losses at the time of acceptance in order to gain experience in developing new technology that could be used in future products and services. Provisions for all losses on contracts are recorded when estimates indicate that a loss will be incurred on a contract. If the Company is not able to

Table of Contents

estimate total project revenues, total costs, or progress toward completion, but is able to estimate that no loss will be incurred on an arrangement, the Company recognizes revenue to the extent of incremental direct costs until the engineering professional services are complete. Thereafter, any remaining revenue is recognized over the period the maintenance and support or other services are provided.

Hardware Revenues. The Company recognizes hardware revenues, net of an allowance for sales returns, from the sales of its TiVo-enabled DVRs. Hardware revenues are recognized upon shipment to consumers or upon delivery to retail customers. The fees for shipping and handling paid by customers are recognized as hardware revenues. The costs associated with shipping and handling these DVRs are expensed as cost of hardware revenues.

Rebates, Revenue Share, and Other Payments to Channel. In accordance with Emerging Issues Task Force (EITF) 01-09, Accounting for Consideration Given by a Vendor to a Customer (Including a Reseller of the Vendors Products) , certain payments to customers such as market development funds and revenue share are shown as a reduction to revenue rather than as a sales and marketing expense. These payments are classified as rebates, revenue share, and other payments to channel. The Company s policy is to expense customer payments when they are fixed and determinable. The Company expenses such costs as incurred.

Deferred Revenues. Deferred revenues consists of unrecognized service and technology fees that have been collected, however the related service has not yet been provided or VSOE of fair value does not exist for the undelivered elements of an arrangement.

Research and Development

Research and development expenses consist primarily of employee salaries, related expenses, and consulting fees relating to the development of the TiVo service platform and products that enable the TiVo service. Research and development costs are expensed as incurred.

Sales and Marketing

Sales and marketing expenses consist primarily of employee salaries and related expenses, media advertising, public relations activities, special promotions, trade shows, and the production of product related items, including collateral and videos. Additionally, included are sales and marketing expenses that consist of cash and non-cash charges related to the Company s agreements with related parties.

Advertising

The Company expenses advertising costs as the services are provided. Advertising expenses were $994,000 and $547,000 for the three months ended April 30, 2005 and 2004, respectively.

Warranty Expense and Liability

The Company accrues warranty costs for the expected material and labor required to provide warranty services on its hardware products. The methodology used in determining the liability for product warranty services is based upon historical information and experience. The Company s warranty reserve liability is calculated as the total volume of unit sales over the warranty period, multiplied by the expected rate of warranty returns multiplied by the estimated cost to replace or repair the customers product returns under warranty.

Interest Expense and Other

Interest expense and other consists of cash and non-cash charges related to interest expense paid to related parties and non-related parties. Included in interest expense for the three months ended April 30, 2004 are cash charges for coupon interest expense related to the convertible notes payable. Included in non-cash interest expense for the three months ended April 30, 2004 is amortization of discount on the convertible notes payable and debt issuance costs. Other expenses include fees for the bank line of credit and the letter of credit.

Table of Contents

Comprehensive Loss

The Company has no material components of other comprehensive income or loss and, accordingly, the Comprehensive Loss is the same as the net loss for all periods presented.

Fair Value of Financial Instruments

Carrying amounts of certain of the Company s financial instruments including cash and cash equivalents, accounts receivable, accounts payable, and accrued expenses approximate their fair value because of their short maturities. Available-for-sale marketable securities are reported at their fair value based on quoted market prices.

Business Concentrations and Credit Risk

Financial instruments that potentially subject the Company to a concentration of credit risk principally consist of cash, cash equivalents, short-term investments, and trade receivables. The Company currently invests the majority of its cash in money market funds and maintains them with several financial institutions with high credit ratings. The Company also invests in debt instruments of the U.S. government and its agencies and corporate issuers with high credit ratings. As part of its cash management process, the Company performs periodic evaluations of the relative credit ratings of these financial institutions. The Company has not experienced any credit losses on its cash, cash equivalents, or short-term investments.

The majority of the Company s customers are concentrated in the United States. The Company is subject to a minimal amount of credit risk related to these customers as service revenue is primarily obtained through credit card sales. DIRECTV generated approximately 14% and 15% of net revenues for the three months ended April 30, 2005 and 2004, respectively. The Company evaluates its outstanding accounts receivable each period for collectibility. This evaluation involves assessing the aging of the amounts due to the Company and reviewing the credit-worthiness of each customer. Based on this evaluation, the Company records an allowance for accounts receivable that are estimated to not be collectible. The allowance for doubtful accounts receivable at April 30, 2005 and January 31, 2005 was $113,000 and $104,000, respectively.

The Company is dependent on single suppliers for several key components and services. The Company does not have contracts or arrangements with such suppliers. Instead, the Company purchases these components and services by submitting purchase orders with these companies. The Company also has an agreement with Tribune Media Services, its sole supplier of programming guide data for the TiVo service. If these suppliers fail to perform their obligations, the Company may be unable to find alternative suppliers or deliver its products and services to its customers on time or at all.

Recent Accounting Pronouncements

In November 2004, the FASB issued FASB Statement No. 151, Inventory Costs an Amendment of ARB No. 43, Chapter 4 (FAS 151). FAS 151 amends ARB 43, Chapter 4, to clarify that abnormal amounts of idle facility expense, freight, handling costs, and wasted materials (spoilage) should be recognized as current-period charges. In addition, this Statement requires that allocation of fixed production overheads to the costs of conversion be based on the normal capacity of the production facilities. The provisions of this Statement are effective for inventory costs incurred during fiscal years beginning after June 15, 2005. The adoption of the provisions of FAS 151 is not expected to have a material impact on the Company s financial position or results of operations.

On December 16, 2004, the FASB issued FASB Statement No. 123 (revised 2004), Share-Based Payment, which is a revision of FASB Statement No. 123, Accounting for Stock Based Compensation. Statement 123(R) supersedes APB Opinion No. 25, Accounting for Stock Issued to Employees, and amends FASB Statement No. 95, Statement of Cash Flows. Generally, the approach in Statement 123(R) is similar to the approach described in Statement 123. However, Statement 123(R) requires all share-based payments to employees, including grants of employee stock options, to be recognized in the income statement based upon their fair values. Pro forma disclosure is no longer an alternative. In April 2005, the Securities and Exchange Commission announced the adoption of a new rule that amends the effective date of FAS 123(R). The effective date of the new standard under these new rules for our consolidated financial statements is February 1, 2006, with early adoption permitted. The Company has no plans for early adoption.

Table of Contents

Statement 123(R) permits public companies to adopt its requirements using one of two methods:

1. A modified prospective method in which compensation cost is recognized beginning with the effective date (a) based on the requirements of Statement 123(R) for all share-based payments granted after the effective date; and (b) based on the requirements of Statement 123 for all awards granted to employees prior to the effective date of Statement 123(R) that remain unvested on the effective date.

2. A modified retrospective method which includes the requirements of the modified prospective method described above, but also permits entities to restate based on the amounts previously recognized under Statement 123 for purposes of pro forma disclosures either (a) all prior periods presented; or (b) prior interim periods of the year of adoption.

The Company is currently evaluating which of the two methods it will adopt.

As permitted by Statement 123, the Company currently account for share-based payments to employees using the intrinsic value method and, as such, generally recognize no compensation cost for employee stock options. Accordingly, the adoption of Statement 123(R) s fair value method will have a significant impact on the Company s results of operations, although it will have no impact on its overall financial position based on its current share based awards to employees. The impact of adoption of Statement 123(R) cannot be predicted at this time because it will depend on levels of share-based payments granted in the future, the valuation model used to value the options and other variables. However, had the Company adopted Statement 123(R) in prior periods, the impact of that standard would have approximated the impact of Statement 123 as described in the stock compensation disclosure included in Note 5 to the Company s consolidated financial statements.

3. PROPERTY AND EQUIPMENT, NET

Property and equipment, net consists of the following:

	April 30, 2005	January 31, 2005
	(In thousands)	
Furniture and fixtures	$ 3,149	$ 3,149
Computer and office equipment	17,914	17,360
Lab equipment	2,002	1,930
Leasehold improvements	4,890	4,852
Capitalized software	8,640	8,551
Total property and equipment	36,595	35,842
Less: accumulated depreciation	(29,323)	(28,062)
Property and equipment, net	$ 7,272	$ 7,780

Table of Contents

4. CAPITALIZED SOFTWARE AND INTANGIBLE ASSETS, NET

Capitalized software and intangible assets, net consists of the following:

	April 30, 2005	January 31, 2005
	(In thousands)	
Capitalized software	$ 1,951	$ 1,951
Intellectual property rights	4,265	350
Intangible assets, gross	6,216	2,301
Less: accumulated amortization	(226)	(70)
Intangible assets, net	$ 5,990	$ 2,231

5. STOCK-BASED COMPENSATION PLANS

The Company has stock option plans and an Employee Stock Purchase Plan (ESPP), under which officers, employees, consultants and non-employee directors may be granted options to purchase shares of the Company s authorized but un-issued or reacquired common stock, and may also be granted restricted stock and other stock awards. The Company s stock option plans are accounted for under the intrinsic value recognition and measurement principles of APB Opinion No. 25, Accounting for Stock Issued to Employees, and related interpretations. During the three months ended April 30, 2005, options to purchase 3,628,900 shares were granted under the Company s stock option plans at exercise prices equal to the market price of the underlying common stock on the date of grant. The weighted average fair value of the stock options granted with exercise prices equal to fair market value on date of grant, during the three months ended April 30, 2005 was $2.04. During the three months ended April 30, 2005, 30,510 shares of unvested restricted stock that had been granted to employees were retired due to forfeiture resulting in a reversal of $260,000 of deferred compensation.

There were 245,655 shares issued to employees under the Company s ESPP during the three months ended April 30, 2005. The weighted average fair value of the offerings to purchase ESPP shares for the three months ended April 30, 2005 was $2.58. During the three months ended April 30, 2005 a reversal of $216,000 in stock based compensation expense was recorded as a result of the forfeiture of unvested restricted common stock during the quarter. Stock based compensation expense recognized for the three months ended April 30, 2005 was $158,000.

During the three months ended April 30, 2004, options to purchase 303,700 shares were granted under the stock option plans at exercise prices equal to the market price of the underlying common stock on the date of grant. There were no stock options granted with exercise prices less than market price at the date of grant during this period. The weighted average fair value of the stock options granted during the three months ended April 30, 2004 was $4.38. In addition to the stock options granted during the three months ended April 30, 2004, 16,852 shares of unvested restricted stock that had been granted to an employee were retired due to forfeiture resulting in a reversal of $144,000 of deferred compensation. There were 227,517 shares issued to employees under the Company s ESPP during the three months ended April 30, 2004. The weighted average fair value of the offerings to purchase these ESPP shares for the three months ended April 30, 2004 was $2.03. Stock-based compensation expense recognized for the three months ended April 30, 2004 was $298,000.

Table of Contents

The following table illustrates the effect on the Company s net loss and basic and diluted loss per share as if the Company had applied the fair value recognition provisions of SFAS No. 123, as amended, to options granted under the Company s stock option plans and under the Company s ESPP for the three months ended April 30, 2005 and 2004:

	Three Months Ended April 30,	
	2005	2004
	(In thousands, except per share data)	
Net loss, as reported	$ (857)	$ (9,067)
Add back: stock based compensation expense recognized, net of related tax effects	(58)	298
Pro forma effect of stock based compensation expense determined under the fair value method for all awards, net of related tax effects	(2,336)	(3,397)
Net loss, pro forma	$ (3,251)	$ (12,166)
Basic and diluted loss per common share, as reported	$ (0.01)	$ (0.11)
Basic and diluted loss per common share, pro forma	$ (0.04)	$ (0.15)

The fair values of stock options issued to employees and non-employee directors and ESPP offerings were estimated using the Black Scholes Option-pricing model assuming no expected dividends and the following weighted average assumptions:

	ESPP		Stock Options	
	Three Months Ended April 30,			
Weighted average assumptions	2005	2004	2005	2004
Expected term (in years)	0.5	0.5	4.0	4.0
Volatility	65%	55%	65%	55%
Average risk free interest rate	3.05%	1.04%	3.54%	2.75%

The Black Scholes Option-pricing model requires the input of highly subjective assumptions, including the option s expected life and the expected price volatility of the underlying stock.

6. NET LOSS PER COMMON SHARE

Basic and diluted net loss per common share is calculated in accordance with SFAS No. 128, Earnings Per Share. Basic net loss per common share is computed by dividing net loss attributable to common stockholders by the weighted average number of common shares outstanding excluding repurchasable common stock and unvested restricted stock outstanding of 524,453 shares and 542,329 shares for the three months ended April 30, 2005 and 2004, respectively.

Table of Contents

The weighted average number of shares outstanding used in the computation of basic and diluted net loss per share does not include the effect of the following potentially outstanding common stock. The effect of these potentially outstanding shares were not included in the calculation of diluted net loss per share because the effect would have been antidilutive:

	As of April 30,	
	2005	2004
Repurchasable common stock	524,453	542,329
Unvested restricted stock outstanding	11,441	80,089
Number of common shares issuable for convertible notes payable		2,619,045
Options to purchase common stock	18,166,077	12,806,354
Potential shares to be issued from ESPP	533,284	485,505
Warrants to purchase common stock	4,838,644	4,843,644
Total	24,073,899	21,376,966

7. INDEMNIFICATION ARRANGEMENTS AND GUARANTEES

Product Warranties

Product Warranties

The Company s minimum warranty period to consumers for TiVo-enabled DVRs is 90 days from the date of consumer purchase. Within the minimum warranty period, consumers are offered a no-charge exchange for TiVo-enabled DVRs returned due to product defect. After the minimum warranty period, consumers may exchange a TiVo-enabled DVR with a product defect for a charge. At April 30, 2005 and 2004, the accrued warranty reserve was $536,000 and $455,000, respectively. The Company s accrued warranty reserve is included in accrued liabilities in the accompanying condensed consolidated balance sheets.

	2005	2004
	(In thousands)	
Balance at January 31	$ 675	$ 616
Additional warranties issued	114	224
Adjustments to warranty reserve estimates	35	(288)
Settlements during the period	(288)	(97)
Balance at April 30	$ 536	$ 455

Indemnification Arrangements

The Company undertakes indemnification obligations in its ordinary course of business in connection with, among other things, the licensing of its products, the provision of consulting services, and the issuance of securities. Pursuant to these agreements, the Company may indemnify the other party for certain losses suffered or incurred by the indemnified party, generally its business partners or customers, underwriters or certain investors, in connection with various types of claims, which may include, without limitation, claims of intellectual property infringement, certain tax liabilities, negligence and intentional acts in the performance of services and violations of laws, including certain violations of securities laws. The term of these indemnification obligations is generally perpetual. The Company s obligation to provide indemnification would arise in the event that a third party filed a claim against one of the parties that was covered by the Company s indemnification obligation. As an example, if a third party sued a customer for intellectual property infringement and the Company agreed to indemnify that customer against such claims, its obligation would be triggered. In particular, as the Company has disclosed in Note 8, it is currently indemnifying Sony against a claim of intellectual property infringement brought by Command Audio and Humax against a claim of intellectual property infringement brought by EchoStar Technologies Corporation in connection with each companies manufacture and sale of TiVo devices.

The Company is unable to estimate with any reasonable accuracy the liability that may be incurred pursuant to its indemnification obligations. A few of the variables affecting any such assessment include but are not limited to: the nature of the claim asserted, the relative merits of the claim, the financial ability of the party suing the indemnified party to engage in protracted litigation, the number of parties seeking indemnification, the nature and amount of damages claimed by the party suing the indemnified party and the willingness of such party to engage in settlement negotiations. Due to the nature of the Company s potential indemnity liability, its indemnification obligations could range from immaterial to having a material adverse impact on its financial position and its ability to continue in the ordinary course of business.

Under certain circumstances, the Company may have recourse through its insurance policies that would enable it to recover from its insurance company some or all amounts paid pursuant to its indemnification obligations. The Company does not have any assets held either as collateral or by third parties that, upon the occurrence of an event requiring it to indemnify a customer, the Company could obtain and liquidate to recover all or a portion of the amounts paid pursuant to its indemnification obligations.

8. COMMITMENTS AND CONTINGENCIES

Legal Matters

In September 1999, TiVo received letters from Time Warner, Inc. and Fox Television stating that TiVo s personal television service exploits these companies copyrights without the necessary licenses. The Company believes that the TiVo service does not infringe on these copyrights and believes that there will not be an adverse impact as a result of these letters.

On June 12, 2001, a securities class action lawsuit in which the Company and certain of its officers and directors are named as defendants was filed in the United States District Court for the Southern District of New York. This action, which is captioned *Wercberger v. TiVo et al.*, also names several of the underwriters involved in the Company s initial public offering as defendants. This class action was brought on behalf of a purported class of purchasers of the Company s common stock from September 30, 1999, the time of its initial public offering, through December 6, 2000. The central allegation in this action is that the underwriters in the initial public offering solicited and received undisclosed commissions from, and entered into undisclosed arrangements with, certain investors who purchased TiVo common stock in the initial public offering and the after-market. The complaint also alleges that the TiVo defendants violated the federal securities laws by failing to disclose in the initial public offering prospectus that the underwriters had engaged in these alleged arrangements. More than 150 issuers have been named in similar lawsuits. In July 2002, an omnibus motion to dismiss all complaints against issuers and individual defendants affiliated with issuers (including the TiVo defendants) was filed by the entire group of issuer defendants in these similar actions. On October 8, 2002, TiVo s officers were dismissed as defendants in the lawsuit. On February 19, 2003, the court in this action issued its decision on defendants omnibus motion to dismiss. This decision dismissed the Section 10(b) claim as to TiVo but denied the motion to dismiss the Section 11 claim as to TiVo and virtually all of the other issuer-defendants.

On June 26, 2003, the plaintiffs announced a proposed settlement with the Company and the other issuer defendants. The proposed settlement provides that the plaintiffs will be guaranteed $1.0 billion dollars in recoveries by the insurers of the Company and other issuer defendants.

Accordingly, any direct financial impact of the proposed settlement is expected to be borne by the Company s insurers in accordance with the proposed settlement. In addition, the Company and the other settling issuer defendants will assign to the plaintiffs certain claims that they may have against the underwriters. If recoveries in excess of $1.0 billion dollars are obtained by the plaintiffs from the underwriters, the Company s and the other issuer defendants monetary obligations to the class plaintiffs will be satisfied. Furthermore, the settlement is subject to a hearing on fairness and approval by the Federal District Court overseeing the IPO Litigation. On February 15, 2005, the Court issued an order preliminarily approving the terms of the proposed settlement. The Court also certified the settlement classes and class representatives for purposes of the proposed settlement only. Due to the inherent uncertainties of litigation and assignment of claims against the underwriters, and because the settlement has not yet been finally approved by the Federal District Court, the ultimate outcome of the matter cannot be predicted. In accordance with the Statement of Financial Accounting Standards No. 5, Accounting for Contingencies , the Company believes any contingent liability related to this claim is not probable or estimable and therefore no amounts have been accrued in regards to this matter as of April 30, 2005.

On September 25, 2001, Pause Technology LLC filed a complaint against TiVo in the U.S. District Court for the District of Massachusetts alleging willful and deliberate infringement of U.S. Reissue Patent No. 36,801, entitled Time Delayed Digital Video System Using Concurrent Recording and Playback. Pause Technology alleges that it is the owner of this patent, and further alleges that TiVo has willfully and deliberately infringed this patent by making, selling, offering to sell, and using within the United States the TiVo digital video recorder. Pause Technology seeks unspecified monetary damages as well as an injunction against TiVo s operations. It also seeks attorneys fees and costs. On February 6, 2004, TiVo obtained a favorable summary judgment ruling in the case in the District Court. The court ruled that the Company s software versions 2.0 and above do not infringe Pause Technology s patent, and accordingly has ordered that judgment be entered in the Company s favor. On June 16, 2004, Pause Technology filed an appeal to the United States Court of Appeals for the Federal Circuit appealing the February 6, 2004 summary judgment ruling in favor of TiVo. On April 7, 2005, the U.S. District Court for the District of Massachusetts issued an Amended Final Judgment dismissing without prejudice the Company s remaining cross-claim for patent invalidity as being moot in light of the February 9, 2004 judgment in favor of TiVo against Pause Technology as to all claims of infringement in Pause Technology s complaint. On April 8, 2005, Pause Technology filed a notice of appeal with the United States Court of Appeals for the Federal Circuit appealing the April 7, 2005 Amended Final Judgment. The Company is incurring expenses in connection with this litigation that may become material, and in the event there is an adverse outcome, its business could be harmed.

On February 5, 2002, Sony Corporation notified TiVo that Command Audio Corporation had filed a complaint against Sony Electronics, Inc. on February 2, 2002 in the U.S. District Court for the Northern District of California. The complaint alleges that, in connection with its sale of digital video recorders and other products, Sony infringes upon two patents owned by Command Audio, (U.S. Patent Nos. 5,590,195 (Information Dissemination Using Various Transmission Modes) and 6,330,334 (Method and System for Information Dissemination Using Television Signals). The complaint seeks injunctive relief, compensatory and treble damages and Command Audio s costs and expenses, including reasonable attorneys fees. Under the terms of the Company s agreement with Sony governing the distribution of certain digital video recorders that enable the TiVo service, TiVo is required to indemnify Sony against any and all claims, damages, liabilities, costs and expenses relating to claims that its technology infringes upon intellectual property rights owned by third parties. On June 15, 2004, the Court denied Sony s motion for summary judgment of invalidity and granted in part and denied in part Command Audio s motion for summary judgment of infringement. The court found that certain Sony products, including Sony s accused products that enable the TiVo service, literally infringed certain claims of the 334 patent but did not rule on the validity or enforceability of the patents. A trial limited to certain of Sony s allegations that the patents-in-suit are unenforceable was conducted in October 2004. On January 7, 2005, the Court issued a Findings of Fact and Conclusions of Law ruling that the patents-in-suit are not unenforceable based on the allegations presented in the October 2004 trial. On May 12, 2005, the Court granted Sony s motion for partial summary judgment regarding damages. The Court found that Command Audio may not recover any royalties or other damages for sales of allegedly infringing products by Sony that occurred prior to December 4, 2001, the date on which the United States Patent and Trademark Office issued a certificate of correction for the 195 patent. Trial of the remaining issues, including infringement of certain asserted patent claims, validity of all the asserted patent claims and Sony s remaining allegations regarding the enforceability of the patents, is scheduled to commence in October 2005. The Company believes Sony has meritorious defenses against this lawsuit; however, due to its indemnification obligations, the Company is incurring expenses in connection with this litigation. Since February 2002, the Company has incurred $5.6 million in legal expenses. The outcome of this matter and the extent of TiVo s potential exposure associated with it are not presently determinable. If Sony were to lose this lawsuit, the Company s business could be harmed.

On January 5, 2004, TiVo filed a complaint against EchoStar Communications Corporation in the U.S. District Court for the Eastern District of Texas alleging willful and deliberate infringement of U.S. Patent No. 6,233,389, entitled

Table of Contents

Multimedia Time Warping System. On January 15, 2004, the Company amended its complaint to add EchoStar DBS Corporation, EchoStar Technologies Corporation, and Echosphere Limited Liability Corporation as additional defendants. The Company alleges that it is the owner of this patent, and further alleges that the defendants have willfully and deliberately infringed this patent by making, selling, offering to sell and/or selling digital video recording devices, digital video recording device software, and/or personal television services in the United States. On March 9, 2005, the Court denied motions to dismiss and transfer the Company s patent infringement case against EchoStar Communications Corporation and its affiliates. The Court scheduled jury selection to begin October 4, 2005 in Marshall, Texas. The Company seeks unspecified monetary damages as well as an injunction against the defendants further infringement of the patent. The Company could incur material expenses in this litigation.

On April 29, 2005, EchoStar Technologies Corporation filed a complaint against TiVo and Humax USA, Inc. in the U.S. District Court for the Eastern District of Texas alleging infringement of U.S. Patent Nos. 5,774,186 (Interruption Tolerant Video Program Viewing), 6,529,685 B2 (Multimedia Direct Access Storage Device and Formatting Method), 6,208,804 B1 (Multimedia Direct Access Storage Device and Formatting Method) and 6,173,112 B1 (Method and System for Recording In-Progress Broadcast Programs). The complaint alleges that Echostar Technologies Corporation is the owner by assignment of the patents allegedly infringed. The complaint further alleges that the TiVo and Humax have infringed, contributorily infringed and/or actively induced infringement of the patents by making, using, selling or importing digital video recording devices, digital video recording device software and/or personal television services in the United States, and that such infringement is willful and ongoing. Under the terms of our agreement with Humax governing the distribution of certain DVRs that enable the TiVo service, the Company is required to indemnify Humax against any claims, damages, liabilities, costs, and expenses relating to claims that the Company s technology infringes upon intellectual property rights owned by third parties. On May 10, 2005, Humax formally notified Tivo of the claims against it in this lawsuit as required by its agreement with Humax. On June 1, 2005, the Court granted the defendants motion for an extension of time to answer or otherwise respond and ordered the defendants to answer or otherwise respond by July 1, 2005. The Company intends to defend this action vigorously; however, it could be forced to incur material expenses in connection with this lawsuit and/or as a result of its indemnification obligations and, in the event there is an adverse outcome, the Company s business could be harmed.

On August 5, 2004, Compression Labs, Inc. filed a complaint against TiVo Inc., Acer American Corporation, AudioVox Corporation, BancTec, Inc., BenQ America Corporation, Color Dreams, Inc. (d/b/a StarDot Technologies), Google Inc., ScanSoft, Inc., Sun Microsystems Inc., Veo Inc., and Yahoo! Inc. in the U.S. District Court for the Eastern District of Texas alleging infringement, inducement of others to infringe, and contributory infringement of U.S. Patent No. 4,698,672, entitled Coding System For Reducing Redundancy. The complaint alleges that Compression Labs, Inc. is the owner of this patent and has the exclusive rights to sue and recover for infringement thereof. The complaint further alleges that the defendants have infringed, induced infringement, and contributorily infringed this patent by selling devices and/or systems in the United States, at least portions of which are designed to be at least partly compliant with the JPEG standard. On February 16, 2005, the Court ordered the case transferred to the U.S. District Court for the Northern District of California. The Company intends to defend this action vigorously; however, it could be forced to incur material expenses in the litigation and, in the event there is an adverse outcome, the Company s business could be harmed.

In August and September 2004, Phillip Igbinadolor, on behalf of himself, filed complaints against TiVo, Sony Corporation, Sony Electronics, Inc., Sony Corporation of America, JVC, Clarrion Corporation of America, and Philips Consumer Electronics Company in the U.S. District Court for the Eastern District of New York alleging infringement of U.S. Patent Nos. 395,884 and 6,779,196 and U.S. Trademark No. 2,260,689, each relating to an integrated car dubbing system. The complaints were consolidated into one action captioned *Igbinadolor v. Sony Corporation et al*. On November 10, 2004, the Company filed its answer, affirmative defenses and counterclaims and on January 31, 2005, the Company filed a motion for summary judgment. The Company is incurring expenses in connection with this litigation that may become material in the future, and in the event there is an adverse outcome, the Company s business could be harmed.

On November 23, 2004, Digital Development Corporation filed a complaint against TiVo Inc. in the U.S. District Court for the Southern District of New York alleging infringement, inducement of others to infringe, and contributory infringement of U.S. Patent Nos. 4,975,950 and 5,121,345, each entitled System and Method of Protecting Integrity of

19

Table of Contents

Computer Data and Software. On January 27, 2005, the Company and Digital Development Cor