

WARP TECHNOLOGY HOLDINGS INC  
Form S-2/A  
March 22, 2004  
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As filed with the Securities and Exchange Commission on March 22, 2004

Registration No. 333-112771

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

**WASHINGTON, D.C. 20549**

**Amendment No. 2**

**to**

**FORM S-2**

**REGISTRATION STATEMENT**

*Under*

*The Securities Act of 1933*

**WARP Technology Holdings, Inc.**

(Exact name of registrant as specified in charter)

**Nevada**  
(State or other jurisdiction of  
incorporation or organization)

**708 3<sup>rd</sup> Avenue, 6<sup>th</sup> Floor, New York, NY 10017 212-962-9277**  
(Address, including zip code, and telephone number,  
including area code, of registrant's principal executive offices)

**88-0467845**  
(I.R.S. Employer  
Identification No.)

**Gus Bottazzi**

**President and Chief Executive Officer**

**WARP Technology Holdings, Inc.**

**708 3<sup>rd</sup> Avenue, 6<sup>th</sup> Floor, New York, NY 10017**

**212-962-9277**

(Name, address including zip code, and telephone number, including area code, of agent for service)

*Copies To:*

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HELLER EHRMAN WHITE & McAULIFFE LLP

2775 Sand Hill Road, Menlo Park, CA 94025

Approximate date of commencement of proposed sale to the public:

As soon as practicable after the effective date of this Registration Statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933 check the following box.

If the registrant elects to deliver its latest annual report to security holders, or a complete and legible facsimile thereof, pursuant to Item 11(a)(1) of this Form, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.  \_\_\_\_\_

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.  \_\_\_\_\_

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.  \_\_\_\_\_

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box.

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee
Common Stock, par value \$0.00001	44,140,582(1)	\$0.21(2)	\$9,269,522.22(2)	\$1,174.45*
Common Stock, par value \$0.00001	3,086,983(3)	\$0.23(4)	\$ 710,006.09(4)	\$ 89.96*
Common Stock, par value \$0.00001	5,959,354	\$0.19(5)	\$1,132,277.26(5)	\$ 143.46

(1) Includes 15,725,718 shares of common stock issuable upon exercise of outstanding warrants held by the selling stockholders.

(2) Estimated solely for the purpose of computing the amount of the registration fee based on the average of the high and low closing price of the common stock as reported on the OTC Bulletin Board on February 9, 2004 pursuant to Rule 457(c).

(3) Represents 3,086,983 shares of common stock issuable upon exercise of outstanding warrants held by the selling stockholders.

(4) Estimated solely for the purpose of computing the amount of the registration fee based on the average of the high and low closing price of the common stock as reported on the OTC Bulletin Board on February 24, 2004 pursuant to Rule 457(c).

(5) Estimated solely for the purpose of computing the amount of the registration fee based on the average of the high and low closing price of the common stock as reported on the OTC Bulletin Board on March 18, 2004 pursuant to Rule 457(c).

\* Previously paid.

Pursuant to Rule 416, this Registration Statement also registers shares of Common Stock as may be issued upon conversion of the Series B 10% cumulative convertible preferred stock in accordance with its terms.

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

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

**Subject To Completion, Dated March 22, 2004**

**PROSPECTUS**

**WARP Technology Holdings, Inc.**

**53,186,919 shares of Common Stock**

**The common stock offered by this prospectus involve a high degree of risk. You should carefully consider the Risk Factors beginning on page 1 in determining whether to purchase the common stock.**

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The selling stockholders identified in this prospectus are offering these shares of common stock. The selling stockholders may sell their shares from time to time for their own account at market prices prevailing at the time of sale, at prices relating to such prevailing market prices, or at negotiated prices. The selling stockholders will act independently of us in making decisions with respect to the timing, manner and size of each sale.

We will not receive any of the proceeds from the resale of the shares. We agreed to bear substantially all of the expenses in connection with the registration and resale of the shares (other than selling commissions).

For additional information on the methods of sale, you should refer to the section entitled "Plan of Distribution" on page 10.

WARP Technology's common stock is quoted on the OTC Bulletin Board under the symbol WRPT. On January 30, 2004, the last sale price of the common stock on the OTC Bulletin Board was \$0.24 per share.

**A copy of our Annual Report on Form 10-KSB for the year ended June 30, 2003 and a copy of our Quarterly Report on Form 10-QSB for the quarter ended December 31, 2003 accompany this prospectus.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the securities or passed on the adequacy of accuracy of the disclosures in this prospectus. Any representation to the contrary is a criminal offense.**

**Prospective investors should rely only on the information contained in this prospectus or information specifically incorporated by reference in this prospectus. We have not authorized anyone to provide prospective investors with information that is different.**

**Neither the delivery of this prospectus, nor any sale of the shares, shall create any implication that the information in this prospectus is correct after the date hereof.**

The date of this prospectus is \_\_\_\_\_, 2004

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**WARP TECHNOLOGY HOLDINGS, INC.**

We are an information technology company that produces a series of application acceleration products that improve the speed and efficiency of transactions and information requests that are processed over Internet and Intranet network systems. Our hardware and software products and technologies are designed to accelerate network applications, reduce network congestion, and reduce the cost of expensive server deployments for enterprises engaged in high volume network activities.

On May 24, 2002, Abbott Mines, Ltd., a Nevada corporation, acquired the outstanding common stock of WARP Solutions, Inc. in a share exchange transaction. On August 12, 2002, the Abbott Mines Board of Directors authorized and approved the establishment of a subsidiary in the state of Nevada with the name WARP Technology Holdings, Inc. On August 15, 2002, the Abbott Mines Board of Directors authorized and approved the merger of WARP Technology Holdings, Inc. with and into Abbott Mines, Ltd. This merger became effective on August 21, 2002, and Abbott Mines, Ltd. changed its name to WARP Technology Holdings, Inc. Our principal executive offices are located at 708 3<sup>rd</sup> Avenue, 6<sup>th</sup> Floor, New York, New York 10017 and our telephone number is (212) 962-9277. As used in this prospectus, we, us, our and WARP Technology refer to WARP Technology Holdings, Inc., a Nevada corporation, and its wholly-owned subsidiaries. We claim trademark rights in the marks WARP SOLUTIONS and PARTNERWARE.

**RISK FACTORS**

*From time to time, information provided by us or statements made by our employees may contain forward-looking information involving risks and uncertainties. In particular, statements contained in this prospectus or incorporated by reference into this prospectus that concern future operating results or other statements using words such as anticipate, believe, could, estimate, intend, may, plan, project, should or will constitute forward-looking statements and are made under the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. Our actual results of operations and financial condition have varied in the past and may in the future vary significantly from those stated in any forward-looking statements. Factors that may cause such differences include, without limitation, the risks, uncertainties and other information discussed below. Each of these factors, and others, are discussed from time to time in our filings with the Securities and Exchange Commission. We do not assume any obligation to update any forward-looking statement we make.*

*Any investment in our common stock involves a high degree of risk. Prospective purchasers of the common stock offered by this prospectus should carefully consider the following Risk Factors in addition to the other information appearing in or incorporated by reference into this prospectus before you decide to buy the common stock. Additional risks and uncertainties not currently known to us or that we do not currently deem material may also become important factors that may harm our business. If any of the following risks actually occur our business, financial condition or results of operations would likely suffer, the trading price of our common stock would probably decline, and you may lose all or part of the money you paid to buy our common stock*

**Our Limited Operating History Makes Evaluation of Our Business Difficult.**

We have a limited operating history. We were originally incorporated in June 2000, and began selling products in June 2002. As a result, we have limited historical financial and commercial acceptance data upon which to base planned operating expenses or forecast accurately our future operating results. Further, our limited operating history will make it difficult for investors and securities analysts to evaluate our business and prospects. You must consider our business and prospects in light of the risks and difficulties we may face as an early stage company with limited operating history in the information technology market, many of which may be beyond our control. These risks and difficulties include challenges in accurate financial planning, accurate revenue forecasting and repeatable sales operations as a result of limited historical data and

the uncertainties

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resulting from having had a relatively limited time period in which to implement and evaluate our business strategies as compared to older companies with longer operating histories. Our failure to address these risks and difficulties successfully would seriously harm our business.

### **We Have a History of Significant Losses and We Anticipate That We Will Continue to Incur Losses for the Foreseeable Future, Which Could Harm Our Ability to Continue as a Going Concern.**

We have experienced operating losses, as well as net losses, for each of the years during which we have operated. We anticipate future losses and negative cash flow to continue for the foreseeable future.

We incurred net losses of \$13,053,115, \$1,615,649, and \$7,233,106 for the twelve months ended June 30, 2003, six months ended June 30, 2002 and twelve months ended December 31, 2001, respectively. As of June 30, 2003, our accumulated deficit was approximately \$27,000,000 and we had insufficient capital to fund all of our obligations. These conditions raise substantial doubt about our ability to continue as a going concern, and our independent accountants have issued a qualified opinion to that effect in connection with the audit of our financial statements for the fiscal year ended June 30, 2003. The financial statements do not include any adjustments to reflect the possible future effect of the recoverability and classification of assets or the amounts and classifications of liabilities that may result from the outcome of this uncertainty.

We have received only limited revenue from the sale of our products. We have incurred significant costs in connection with the development of our technologies and proposed products and there is no assurance that they will achieve sufficient revenues to offset anticipated operating costs. Although we anticipate deriving revenues from the sale of our WARP 2063e, Spider Software and iMimic DataReactor products, our revenues depend on our ability to advertise and market these products effectively. We anticipate that we will not generate sufficient revenues to support our operations for at least the next twelve months and that we will continue to incur losses until such time.

If we do not generate sufficient revenues, or if our operating expenses exceed our expectations, we may not be able to offset anticipated operating costs or achieve profitability in the near future or at all. Even if we do achieve profitability, we may not be able to sustain or increase profitability on a quarterly or annual basis in the future. If we are unable to offset anticipated operating expenses or achieve profitability within a short period of time, or at all, or if we are unable to sustain profitability at satisfactory levels, our financial condition and stock price could be adversely affected.

### **Our Continuation as a Going Concern is Dependent Upon Receiving Additional Financing and We May Not Be Able to Raise Additional Financing on Favorable Terms or At All.**

Our continuation as a going concern is dependent upon receiving additional financing. We anticipate that during our 2004 fiscal year we will need to raise over \$4,000,000 to support our working capital needs and to continue to execute the requirements of our business plan. Although we are not aware of any legal limitations restricting our ability to borrow funds to increase the amount of capital available to us, we cannot be certain that we will be able to obtain additional financing on commercially reasonable terms or at all.

If we raise additional funds through the issuance of equity, equity-related or debt securities, such securities may have rights, preferences or privileges senior to those of the rights of our common stock or Series B 10% Cumulative Convertible Preferred Stock and our stockholders will experience dilution of their ownership interests. A failure to obtain additional financing or an inability to obtain financing on acceptable terms could require us to scale back, or fail to address opportunities for expansion or enhancement of, our operations or incur indebtedness that has a



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high rate of interest or substantial restrictive covenants. Our limited resources and limited operating history will make it difficult to borrow funds. The amount and nature of any such borrowings would depend on numerous considerations, including our capital requirements, our perceived ability to comply with the conditions and covenants associated with such borrowings and the then prevailing conditions in the financial

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markets, as well as general economic conditions. There can be no assurance that additional financing will be available on terms deemed to be commercially acceptable by us and in our best interest.

In the future, we may not generate sufficient revenue to pay our operating expenses. If we fail to generate sufficient revenue, we may need to raise additional capital to pay these expenses, to facilitate long-term expansion, or to respond to competitive pressures or unanticipated financial requirements. There can be no assurance that additional financing, if required or sought in the future, would be available on terms deemed to be commercially acceptable by us and in our best interest.

**We May Fail to Anticipate and Adapt to Market Changes, Which Could Impair Our Ability to Remain Competitive and Harm Our Market Share.**

Our success depends in part on our ability to anticipate rapidly changing market trends, and to adapt our products to meet the changing network application acceleration needs of information technology users. The market is characterized by frequent and often dramatic changes, including the following:

the movement of web applications from the Internet to the Intranet;

the evolution of eCDN environments in enterprise networks;

the use of proprietary compression and other technologies to optimize the TCP layer of the corporate network;

the inclusion of acceleration features in middleware products such as WebLogic, Websphere and Oracle;

a rapid decline in the cost of international data circuits; and

the inclusion of competitive features in network switches, routers and load balancers.

This environment of rapid and continuous change presents significant challenges to our ability to develop new products for our target markets. If we fail to develop, gain access to and use leading technologies in a cost-effective and timely manner, maintain close working relationships with current and potential customers and expand our technical and design expertise in a manner that meets these changing market needs, we may lose our customers to competitors who may better anticipate changing market trends. If we are unable to compete effectively in the rapidly changing information technology market and maintain or increase our market share, our business, financial condition and operating results could be adversely affected.

**If the Protection of Our Intellectual Property Rights is Inadequate, Our Ability to Compete Successfully Could be Impaired and We Could Lose Customers.**

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We regard our patents, copyrights, trademarks, trade secrets and similar intellectual property as critical to our success. We rely on a combination of patent, trademark and copyright law, trade secret protection and confidentiality agreements with our employees, consultants, partners, distributors, clients and others to protect our proprietary rights. Nevertheless, the steps we take to protect our proprietary rights may be inadequate. Detection and elimination of unauthorized use of our products is difficult. We may not have the means, financial or otherwise, to prosecute infringing uses of our intellectual property by third parties. Further, effective patent, trademark, service mark, copyright and trade secret protection may not be available in every country in which we will sell our products and offer our services. We are attempting to sell our products in countries and continents where we have not been granted patent protection, including Japan, Europe and Canada. It is possible that in those locations a third party may make an infringing use of our technology and compete for the same market. If we are unable to protect or preserve the value of our patents, trademarks, copyrights, trade secrets or other proprietary rights for any reason, our business, operating results and financial condition could be harmed.

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Litigation may be necessary in the future to enforce our intellectual property rights, to protect our trade secrets, to determine the validity and scope of the proprietary rights of others, or to defend against claims that our products infringe upon the proprietary rights of others or that proprietary rights that we claim are invalid. Litigation may also be necessary to enforce the contractual arrangements which we have entered into to protect our intellectual property rights, but, there can be no assurance that the courts would enforce such arrangements. Litigation could result in substantial costs and diversion of resources and could harm our business, operating results and financial condition regardless of the outcome of the litigation.

Other parties may assert infringement or unfair competition claims against us. We cannot predict whether third parties will assert claims of infringement against us, or whether any future claims will prevent us from operating our business as planned. If we are forced to defend against third-party infringement claims, whether they are with or without merit or are determined in our favor, we could face expensive and time-consuming litigation, which could distract technical and management personnel. If an infringement claim is determined against us, we may be required to pay monetary damages or ongoing royalties. Further, as a result of infringement claims either against us or against those who license technology to us, we may be required, or deem it advisable, to develop non-infringing intellectual property or enter into costly royalty or licensing agreements. Such royalty or licensing agreements, if required, may be unavailable on terms that are acceptable to us, or at all. If a third party successfully asserts an infringement claim against us and we are required to pay monetary damages or royalties or we are unable to develop suitable non-infringing alternatives or license the infringed or similar intellectual property on reasonable terms on a timely basis, it could significantly harm our business.

### **We Have Many Competitors Who May be More Effective Than Us Which Could Result in Pricing Pressure and Loss of Market Share.**

The information technology industry is highly competitive. We compete directly with a variety of hardware, software and service providers who offer static and dynamic content acceleration technologies and services. Increased competition is likely to result in price reductions, reduced gross margins, and loss of market share, any of which could seriously harm our net revenues and results of operations. We currently or potentially compete with a variety of other companies, including:

Software providers, such as IBM Corp., Oracle Corp. and BEA Systems;

Static caching vendors, such as Volera (a unit of Novell), and Network Appliances, Blue Coat Systems;

Service vendors, such as Akamai Technologies;

Network I/O acceleration companies, such as Redline Networks and Expand Networks;

Router and Switch manufacturers such as Cisco Systems; and

Load Balancer manufactures such as F5 Networks.

Many of our competitors have longer operating histories, larger, more established customer bases, greater brand recognition and significantly greater resources, particularly financial resources. In addition, our market has few barriers to entry. New competitors could easily compete against us in one or more market segments addressed by our dynamic content acceleration technologies and services. Our current and potential competitors may be able to develop products and services that are more effective than our products or services. Competitors may also produce their products and services at less cost and market them more effectively. If we are unable to successfully compete against existing or new

competitors, such an inability will have a material adverse effect on our business.

**We May Not be Able to Develop the New Products That We Need to Remain Competitive.**

Our future success depends on our ability to successfully identify new product opportunities, develop and bring to market new products, license and integrate new products and respond effectively to technological

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changes and product developments by our competitors. We are currently developing new products, as well as new applications of our existing products. However, the process of internally researching, developing, launching and gaining client acceptance of a new product or a new application to an existing product is inherently risky and costly. We may experience difficulties that could delay or prevent the successful development, introduction or marketing of our products and applications. Our products may not adequately meet the requirements of our current or prospective customers. Any failure by us to successfully design, develop, test and introduce such new products, or the failure of our recently introduced products to achieve market acceptance, could prevent us from maintaining existing customer relationships, gaining new customers or expanding our markets and could have a material adverse effect on our business, financial condition and results of operations. Any failure by us to accurately predict what competitors will develop and bring to market could also have a material adverse effect on our performance results.

### **We are Dependent on a Small Number of Customers and the Loss of One of Our Customers Could Seriously Harm Our Business.**

Our revenues to date have been generated from a small number of customer accounts. We derived approximately 100% of our revenues for the twelve months ended June 30, 2003 from twelve enterprise customer accounts. The loss of, or a material order cancellation by, one of our customers or prospective customers, could seriously harm our net revenues and results of operations for that period. In addition, we must continue to attract new clients to purchase our products in the future as historically we have not benefited from significant repeat business.

### **The Loss of Our Senior Management or Other Key Personnel Could Harm Our Current and Future Operations and Prospects.**

Our future success depends in part on the continued service and on the performance of our key design engineering, sales, marketing and executive personnel, particularly Mr. Gus Bottazzi, our President and Chief Executive Officer, Mr. Greg Parker, our Chief Technology Officer and Mr. Michael Corcoran, a software engineer. Our future success also depends in part on our ability to motivate other officers and key employees. The loss of the services of any of our executive officers or other key employees for any reason could harm our business, financial condition and operating results. Our future success also depends on our ability to identify, attract, hire, train, retain and motivate other highly skilled engineering, managerial, marketing and sales personnel. We continue to experience intense competition in recruiting and retaining qualified employees. If we are unable to successfully hire, retain and motivate a sufficient number of qualified employees, whether as a direct result of our financial condition, our inability to attract such employees or any other factors, the quality of our product development efforts, marketing, sales and management could each be negatively impacted, which could have an adverse effect on our business, results of operations and financial condition.

### **We Have Grown Quickly and if We Fail to Manage Our Growth, Our Business Will Suffer.**

We have rapidly and significantly expanded our operations, and anticipate that further significant expansion in executive personnel, technical operations, and field sales will be required to address potential growth in our customer base and market opportunities. This expansion will take place both domestically as well as abroad, and has placed, and is expected to continue to place, a significant strain on our management, operational and especially financial resources. Furthermore, some of our officers or senior management personnel have no prior senior management experience at public companies. Our new employees include key officers as well as a number of key managerial, technical and operations personnel who have not yet been fully integrated into our operations. Additionally, we need to properly implement and maintain our financial and managerial controls, reporting systems and procedures, including the increased internal controls and procedures required by the recently enacted Sarbanes-Oxley Act of 2002. If unable to manage growth effectively or successfully integrate any assets, technologies or businesses that we may acquire, our business, financial condition and results of operations would be affected adversely.

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**Our Common Stock Is Subject to Penny Stock Restrictions Under Federal Securities Laws, Which Could Reduce The Liquidity of Our Common Stock.**

If the market price for our common stock remains below \$5.00 per share, our common stock may be deemed to be a penny stock under regulations adopted by the Securities and Exchange Commission. On January 30, 2004, the closing price for our common stock, as quoted on the Over the Counter Bulletin Board, was \$0.24 per share. There are additional sales practice requirements on broker-dealers that sell penny stock. For example, in certain transactions involving penny stock, a broker-dealer must make a special suitability determination for the purchaser and have received the purchaser's written consent to the transaction prior to the sale of the penny stock. In addition, a disclosure schedule prepared by the Securities and Exchange Commission must be delivered to each purchaser of a penny stock, along with disclosures regarding the sales commissions payable to both the broker-dealer and the registered representative and current quotations for the securities. Broker-dealers must send purchasers monthly statements disclosing recent price information for the penny stock held in the purchaser's account and information on the limited market in penny stocks. These additional requirements may adversely affect the ability of broker-dealers to sell our securities and may limit the number of broker-dealers who will effect transactions in penny stock.

The additional restrictions on broker-dealers who sell penny stock may further affect the ability of our stockholders to sell their securities. Penny stock holders are often unable to sell penny stock back to the dealer that sold them the penny stock. The mark-ups or commissions charged by broker-dealers selling penny stock may be larger than mark-ups or commissions generally charged by broker-dealers and may deter investors from purchasing penny stock. Because of the large differences between the amounts dealers may charge when they buy our stock and the amounts they may charge when those same dealers sell our stock, investors may be unable to sell the stock immediately back to the dealer at the same price the dealer sold the stock to the investor. In some cases, the stock may fall quickly in value. Investors may be unable to reap any profit from any sale of the stock, if they can sell it at all.

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**USE OF PROCEEDS**

The proceeds from the sale of the common stock offered by this prospectus are solely for the account of the selling stockholders. We will not receive any proceeds from the sale of these shares. We will receive the proceeds from the exercise of warrants entitling the selling stockholders to purchase 1,500,000 shares of our common stock at an exercise price of \$0.36 per share, 14,758,435 shares of our common stock at an exercise price of \$0.33 per share, 320,000 shares of our common stock at an exercise price of \$0.25 per share, 1,726,989 shares of our common stock at an exercise price of \$0.18 per share and 507,298 shares of our common stock at an exercise price of \$0.10 per share. If all warrants held by the selling stockholders are exercised, we will receive up to \$5,851,871.37 in proceeds. We anticipate that any proceeds from the exercise of warrants by the selling stockholders will be used for working capital and other general corporate purposes. Pending the application of any proceeds from the exercise of warrants, if any, by the selling stockholders, we expect to invest the proceeds in short-term, interest-bearing, investment-grade securities.

**ISSUANCE OF PREFERRED STOCK AND WARRANTS TO SELLING STOCKHOLDERS**

In November 2003, we sold approximately 3,624 shares of our Series B 10% cumulative convertible preferred stock and warrants to purchase 10,065,900 shares of our common stock at an exercise price of \$0.33 per share to certain of the selling stockholders in private placement transactions. This prospectus covers the resale of the shares of common stock issuable on conversion of the shares of our Series B 10% cumulative convertible preferred stock and the common stock issuable upon exercise of the warrants issued in these private placements.

In February 2003, we issued approximately 46,770 Units, each Unit consisting of sixteen shares of our common stock and a warrant to purchase nine shares of our common stock at an exercise price of \$0.10 per share. This prospectus covers the resale of the shares of common stock issuable upon exercise of the warrants issued in this private placement.

On January 9, 2004, we issued warrants to purchase an aggregate of 1,500,000 shares of common stock at an exercise price of \$0.36 per share to Mr. Ray Musson and Pershing Keen Nominees f/b/o Killick & Co. The warrants were issued pursuant to the terms of a penalty provision of a registration rights agreement between us, Mr. Musson and Killick & Co. dating back to private investments in us by Mr. Musson and Killick & Co. in January 2003. This prospectus covers the resale of the shares of common stock issuable upon exercise of the warrants issued to Mr. Musson and Killick & Co.

In February 2004, we sold approximately 1,058 shares of our Series B 10% cumulative convertible preferred stock, 1,600,000 shares of our common stock, and warrants to purchase 3,738,888 shares of our common stock at an exercise price of \$0.33 per share to certain of the selling stockholders in private placement transactions. This prospectus covers the resale of the shares of common stock issued, the shares of common stock issuable upon conversion of the shares of our Series B 10% cumulative convertible preferred stock and the common stock issuable upon exercise of the warrants issued in this private placement.

Additionally, included in the table below are an aggregate of 1,242,698 shares of common stock issuable upon conversion of an aggregate of approximately 3,624 shares of our Series B 10% cumulative convertible preferred stock issued in the November 2003 private placement transaction pursuant to the terms of a penalty provision of the registration rights set forth in the Certificate of Designations, Preferences and Rights of the Series B 10% Cumulative Convertible Preferred Stock. Also included below are an aggregate of 3,086,983 shares of common stock issuable upon exercise of warrants that were issued to certain of the selling stockholders pursuant to the terms of agreements between us and the selling stockholders that acted as private placement agents in the private equity transactions described above.





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Pursuant to the terms of the Series B 10% cumulative convertible preferred stock set forth in the Certificate of Designations, Preferences and Rights of the Series B 10% Cumulative Convertible Preferred Stock, the 10% cumulative dividend is payable in cash or stock at the time of conversion. For purposes of this registration statement, we have assumed that we will pay the 10% cumulative dividend in common stock, and we currently intend to do so. To this end, we have included in the table below an aggregate of 5,521,929 shares of common stock, which represents the maximum number of shares of common stock that may be issuable to each of the selling stockholders upon conversion of the Series B 10% cumulative convertible preferred stock in payment of the 10% cumulative dividend, assuming that the selling stockholder does not convert his, her or its shares of Series B 10% cumulative convertible preferred stock until November 4, 2005. Depending upon the time that the selling stockholder converts his, her or its shares of Series B 10% cumulative convertible preferred stock into common stock, some of the shares shown in the table may never in fact be issued or become issuable.

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The table below sets forth as of February 11, 2004 the name of each selling stockholder, the number of shares owned before this offering by each selling stockholder, assuming the selling stockholder does not convert any of his, her or its shares of Series B 10% cumulative convertible preferred stock into common stock until November 4, 2005 and continues to accrue the 10% cumulative dividend which will be paid in common stock, and the maximum number of such shares that each selling stockholder may offer and sell pursuant to this prospectus.

The selling stockholder may sell all, some or none of their shares, and no estimate can be made of the aggregate number or percentage of shares that each selling stockholder will own upon completion of the offering to which this prospectus relates. Accordingly, each selling stockholder has been presumed to sell all of his, her or its shares offered pursuant to this prospectus for purposes of calculating the Number of Shares Owned After Completion of Offering in the table below. See Plan of Distribution below.

We prepared this table based on the information supplied to us by the selling stockholders. The selling stockholders may have sold or transferred in transactions exempt from the registration requirements of the Securities Act of 1933, some or all of their shares since the date on which the information in the table is presented. Information about the selling stockholders may change over time. Any changed information will be set forth in prospectus supplements.

The shares offered by this prospectus may be offered from time to time by and for the respective accounts of the selling stockholders named below or by their permitted pledgees, donees, transferees, beneficiaries, distributees or successors-in-interest selling shares received after the date of this prospectus from a selling stockholder as a gift, pledge, partnership distribution or other non-sale related transfer.

The number of shares owned before the offering, and the number of shares offered pursuant to this prospectus, include shares issuable upon the exercise of warrants held by the selling stockholder.

As of February 11, 2004, there were approximately 73,862,586 shares of our common stock outstanding.

Selling Stockholders	Number of Shares Owned Before Offering( )		Number of Shares Offered Pursuant to This Prospectus( )	Number of Shares Owned After Completion of Offering	
	Amount	Percent		Amount	Percent
	Jericho Investments <sup>(1)(2)</sup>	963,269		1.29	963,269
Cohen Specialists <sup>(3)</sup>	3,425,581	4.58	3,425,581	0	*
Steven Cohen	244,686	*	244,686	0	*
Warren Cohen	174,428	*	141,095	33,333	*
F.L. Salomon & Company <sup>(4)</sup>	489,370	*	489,370	0	*
Daisy Hsu	489,370	*	489,370	0	*

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Erwin Mermelstein	704,437	*	629,437	75,000	*
Lawrence Frisman	978,739	1.32	978,739	0	*
Maurice & Stacy Gozlan	1,957,476	2.63	1,957,476	0	*
Philip Isaacson	489,370	*	489,370	0	*
Bernard Davis	244,686	*	244,686	0	*
MCP Global Corp Ltd. <sup>(5)</sup>	2,205,682	2.96	2,205,682	0	*
Charles D. Kleinow	738,165	*	738,165	0	*
Mai N. & Gerald A. Pogue	738,165	*	738,165	0	*
Pam Investments <sup>(5)</sup>	738,165	*	738,165	0	*
Chahram Pahlavi	738,165	*	738,165	0	*

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Selling Stockholders	Number of Shares Owned		Number of Shares Offered Pursuant to This Prospectus( )	Number of Shares Owned After Completion of Offering	
	Before Offering( )			of Offering	
	Amount	Percent		Amount	Percent
Pogue Capital Management Inc. Money Purchase Plan f/b/o Susan K. Rh.	221,979	*	221,979	0	*
Domenico Schinella	246,643	*	246,643	0	*
Pogue Capital Intl. Ltd. <sup>(5)</sup>	2,205,682	2.96	2,205,682	0	*
Keith A. Hanson IRA Charles Schwab & Co. Inc. Custodian	249,581	*	249,581	0	*
Keith A. Hanson	239,794	*	239,794	0	*
Blue & Gold Enterprises LLC <sup>(6)</sup>	7,202,158	9.67	2,202,158	5,000,000	6.77
Gerald Korman	97,877	*	97,877	0	*
David A. Dent	489,370	*	489,370	0	*
Tony Nikolich	146,813	*	146,813	0	*
Patrick McBrian <sup>(16)</sup>	978,739	1.32	978,739	0	*
Alan Silverman	244,686	*	244,686	0	*
Woodland Partners <sup>(7)</sup>	489,370	*	489,370	0	*
Woodland Venture Fund <sup>(8)</sup>	1,468,107	1.98	1,468,107	0	*
Seneca Ventures <sup>(8)</sup>	978,739	1.32	978,739	0	*
Brookwood Partners, LP <sup>(7)</sup>	244,686	*	244,686	0	*
Philip Bloom	244,686	*	244,686	0	*
Scott Zelnick <sup>(16)</sup>	978,739	1.32	978,739	0	*
Irwin Lieber	489,370	*	489,370	0	*
Barry Fingerhut	489,370	*	489,370	0	*
Robert Maher	153,133	*	97,877	55,256	*
Dr. Robert Siegel	516,998	*	489,370	27,628	*
Emma Teta	4,756,075	6.32	4,756,075	0	*
Matthew Haddock	293,624	*	293,624	0	*
Morris Holdings LLC <sup>(3)</sup>	2,276,327	3.06	2,032,482	243,845	*
Howard Green	489,370	*	489,370	0	*
Glenn Bergoffen	79,711	*	18,750	60,961	*
Paul Brown	62,500	*	22,500	40,000	*
Andrew Cohen Profit Sharing Plan <sup>(3)</sup>	159,425	*	37,503	121,922	*
Andrew Attardo	26,042	*	9,375	16,667	*
Richard Greenberg	12,500	*	4,500	8,000	*
Christopher Novella	6,770	*	2,437	4,333	*
Susanne Mallon	6,771	*	2,438	4,333	*
Mark Greenberg	79,711	*	18,750	60,961	*
Marks Family Ltd. Partnership <sup>(4)</sup>	156,250	*	56,250	100,000	*
Gary Tolchin <sup>(5)</sup>	128,82	*	56,250	71,832	*
UBS Paine Webber f/b/o Benjamin Marks	156,250	*	56,250		