

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
FOR THE FISCAL YEAR ENDED DECEMBER 31, 2012

OR

TRANSACTION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
FOR THE TRANSITION PERIOD FROM \_\_\_\_\_ TO \_\_\_\_\_.

Commission File Number 0-26068



(Exact name of registrant as specified in its charter)

DELAWARE

(State or other jurisdiction of  
incorporation organization)

95-4405754

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

500 NEWPORT CENTER DRIVE,  
NEWPORT BEACH, CA  
(Address of principal executive offices)

92660  
(Zip Code)

Registrant's telephone number, including area code: (949) 480-8300

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of Each Class</u>	<u>Name of Each Exchange on Which Registered</u>
Common Stock, \$0.001 par value	The NASDAQ Stock Market, LLC

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes R No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No R

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes R No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. R

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

Large accelerated filer R

Accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company)

Smaller reporting company

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

The aggregate market value of the registrant's voting and non-voting common stock held by non-affiliates of the registrant on June 30, 2012, the last business day of the registrant's most recently completed second fiscal quarter, computed by reference to the last sale price of the registrant's common stock as reported by The Nasdaq Global Select Market on such date, was approximately \$1,808,241,000. This computation assumes that all executive officers, directors and persons known to the registrant to be the beneficial owners of more than ten percent of the registrant's common stock are affiliates of the registrant. Such assumption should not be deemed conclusive for any other purpose.

As of February 25, 2013, 49,205,557 shares of common stock were issued and outstanding.

#### **DOCUMENTS INCORPORATED BY REFERENCE**

In accordance with General Instruction G(3) to Form 10-K, portions of the registrant's Definitive Proxy Statement on Schedule 14A for its Annual Meeting of Stockholders to be filed with the Commission within 120 days after the close of the fiscal year covered by this Annual Report on Form 10-K are incorporated by reference into Part III of this Annual Report on Form 10-K. Only those portions of the proxy statement that are specifically incorporated by reference herein shall constitute a part of this Annual Report on Form 10-K.

**ACACIA RESEARCH CORPORATION**  
**ANNUAL REPORT ON FORM 10-K**  
**FISCAL YEAR ENDED DECEMBER 31, 2012**  
**TABLE OF CONTENTS**

	<b>Page</b>
<b>PART I</b>	
Item 1. <a href="#">Business</a>	<a href="#">3</a>
Item 1A. <a href="#">Risk Factors</a>	<a href="#">10</a>
Item 1B. <a href="#">Unresolved Staff Comments</a>	<a href="#">18</a>
Item 2. <a href="#">Properties</a>	<a href="#">18</a>
Item 3. <a href="#">Legal Proceedings</a>	<a href="#">18</a>
Item 4. <a href="#">Mine Safety Disclosures</a>	<a href="#">18</a>
<b>PART II</b>	
Item 5. <a href="#">Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities</a>	<a href="#">19</a>
Item 6. <a href="#">Selected Financial Data</a>	<a href="#">21</a>
Item 7. <a href="#">Management’s Discussion and Analysis of Financial Condition and Results of Operations</a>	<a href="#">23</a>
Item 7A. <a href="#">Quantitative and Qualitative Disclosures About Market Risk</a>	<a href="#">43</a>
Item 8. <a href="#">Financial Statements and Supplementary Data</a>	<a href="#">43</a>
Item 9. <a href="#">Changes in and Disagreements With Accountants on Accounting and Financial Disclosure</a>	<a href="#">43</a>
Item 9A. <a href="#">Controls and Procedures</a>	<a href="#">43</a>
Item 9B. <a href="#">Other Information</a>	<a href="#">44</a>
<b>PART III</b>	
Item 10. <a href="#">Directors, Executive Officers and Corporate Governance</a>	<a href="#">44</a>
Item 11. <a href="#">Executive Compensation</a>	<a href="#">44</a>
Item 12. <a href="#">Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters</a>	<a href="#">44</a>
Item 13. <a href="#">Certain Relationships and Related Transactions, and Director Independence</a>	<a href="#">45</a>
Item 14. <a href="#">Principal Accounting Fees and Services</a>	<a href="#">45</a>
<b>PART IV</b>	
Item 15. <a href="#">Exhibits, Financial Statement Schedules</a>	<a href="#">46</a>

## PART I

### CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

As used in this Annual Report on Form 10-K, “we,” “us” and “our” refer to Acacia Research Corporation and/or its wholly and majority-owned operating subsidiaries. All intellectual property acquisition, development, licensing and enforcement activities are conducted solely by certain of our wholly owned operating subsidiaries.

This Annual Report on Form 10-K, or the annual report, contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act, which include, without limitation, statements about our future business operations and results, our strategies and competition, and other forward-looking statements included in this annual report. Such statements may be identified by the use of forward-looking terminology such as “may,” “will,” “expect,” “believe,” “estimate,” “anticipate,” “intend,” “continue,” or similar terms, variations of such terms or the negative of such terms. Such statements are based on management’s current expectations and are subject to a number of risks and uncertainties, which could cause actual results to differ materially from those described in the forward-looking statements. Such statements address future events and conditions concerning earnings, capital expenditures, litigation, competition, regulatory matters, stock price volatility, liquidity and capital resources and accounting matters. Actual results in each case could differ materially from those anticipated in such statements by reason of factors such as future economic conditions, legislative, regulatory and competitive developments in markets in which we and our subsidiaries operate, and other circumstances affecting anticipated revenues and costs, as more fully disclosed in our discussion of “Risk Factors” in Item 1A of Part I of this annual report. We expressly disclaim any obligation or undertaking to release publicly any updates or revisions to any forward-looking statements contained herein to reflect any change in our expectations with regard thereto or any change in events, conditions or circumstances on which any such statement is based. Additional factors that could cause such results to differ materially from those described in the forward-looking statements are set forth in connection with the forward-looking statements.

### ITEM 1. BUSINESS

#### General

Our operating subsidiaries acquire, develop, license and enforce patented technologies. Our operating subsidiaries generate revenues and related cash flows from the granting of intellectual property rights for the use of patented technologies that our operating subsidiaries own or control. Our operating subsidiaries assist patent owners with the prosecution and development of their patent portfolios, the protection of their patented inventions from unauthorized use, the generation of licensing revenue from users of their patented technologies and, if necessary, with the enforcement against unauthorized users of their patented technologies.

We are a leader in licensing patented technologies and have established a proven track record of licensing success with over 1,225 license agreements executed to date, across 143 of our technology licensing programs. Currently, on a consolidated basis, our operating subsidiaries own or control the rights to over 250 patent portfolios, which include U.S. patents and certain foreign counterparts covering technologies used in a wide variety of industries.

#### Other

We were originally incorporated in California in January 1993 and reincorporated in Delaware in December 1999. Our website address is [www.acaciaresearch.com](http://www.acaciaresearch.com). Reference in this annual report to this website address does not constitute incorporation by reference of the information contained on the website. We make our filings with the Securities and Exchange Commission, or the SEC, including our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, other reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act, and amendments to the foregoing reports, available free of charge on or through our website as soon as reasonably practicable after we file these reports with, or furnish such reports to, the SEC. In addition, we post the following information on our website:

- our corporate code of conduct, our code of conduct for our board of directors and our fraud policy; and
- charters for our audit committee, nominating and corporate governance committee, disclosure committee and compensation committee.

The public may read and copy any materials that we file with the SEC at the SEC’s Public Reference Room at 100 F

Street, NE, Washington, D.C. 20549. The public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330.

Also, the SEC maintains an Internet website that contains reports, proxy and information statements, and other information regarding issuers, including us, that file electronically with the SEC. The public can obtain any documents that we file with the SEC at <http://www.sec.gov>.

### **Intellectual Property Licensing Business**

Our operating subsidiaries acquire, develop, license and enforce patented technologies. Our operating subsidiaries generate revenues and related cash flows from the granting of intellectual property rights for the use of patented technologies that our operating subsidiaries own or control. Our operating subsidiaries assist patent owners with the prosecution and development of their patent portfolios, the protection of their patented inventions from unauthorized use, the generation of licensing revenue from users of their patented technologies and, if necessary, with the enforcement against unauthorized users of their patented technologies. Currently, on a consolidated basis, our operating subsidiaries own or control the rights to over 250 patent portfolios, which include U.S. patents and certain foreign counterparts, covering technologies used in a wide variety of industries. Refer to the section entitled "Patented Technologies" below for a partial summary of patent portfolios owned or controlled by certain of our operating subsidiaries.

We are a leader in patent licensing and our operating subsidiaries have established a proven track record of licensing success with more than 1,225 license agreements executed to date. To date, on a consolidated basis, we have generated revenues from 143 of our technology licensing and enforcement programs. Our professional staff includes in-house patent attorneys, licensing executives, engineers and business development executives.

Our partners include individual inventors and small technology companies who have limited resources and/or expertise to effectively address the unauthorized use of their patented technologies, and also include research laboratories, universities, and large technology companies seeking to effectively and efficiently monetize their portfolio of patented technologies. In a typical arrangement, our operating subsidiary will acquire a patent portfolio or acquire rights to a patent portfolio, and in exchange, the original patent portfolio owner receives (i) an upfront payment for the purchase of the patent portfolio or patent portfolio rights, or (ii) a percentage of our operating subsidiary's net recoveries from the licensing and enforcement of the patent portfolio, or (iii) a combination of the two.

Under U.S. law, an inventor or patent owner has the right to exclude others from making, selling or using their patented invention. Unfortunately, in the majority of cases, infringers are generally unwilling, at least initially, to negotiate or pay reasonable royalties for their unauthorized use of third-party patents and will typically fight any allegations of patent infringement. Inventors and/or patent holders without sufficient legal, financial and/or expert technical resources to bring and continue the pursuit of legal action may lack credibility in dealing with unwilling licensees, and as a result, are often blatantly ignored.

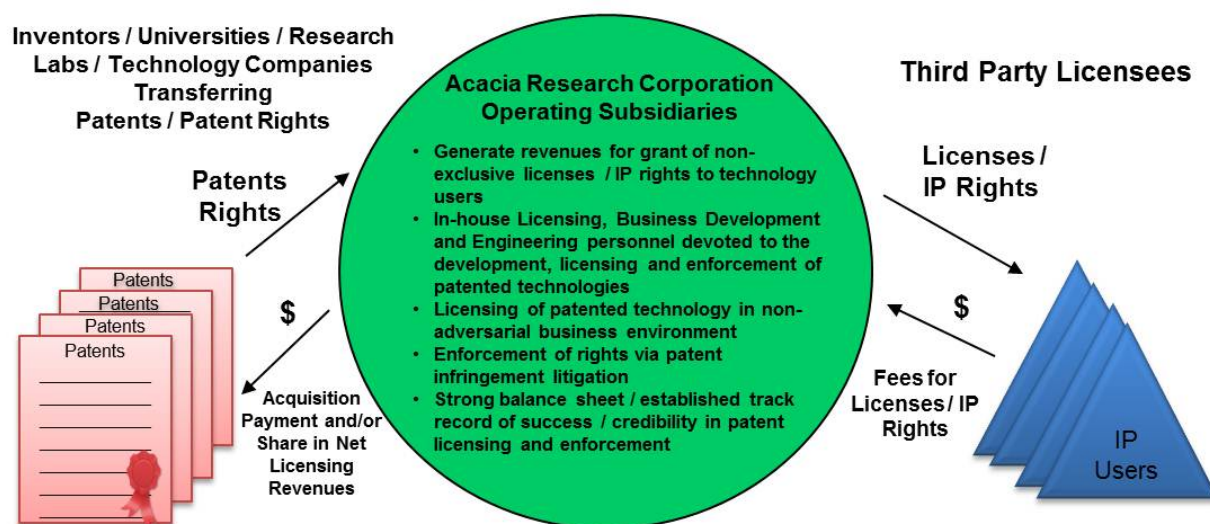
As a result of the common reluctance of patent infringers to negotiate and ultimately take a patent license for the use of third-party patented technologies without at least the threat of legal action, patent licensing and enforcement often begins with the filing of patent enforcement litigation. However, the majority of patent infringement contentions settle out of court, based on the strength of the patent claims, validity, and persuasive evidence and clarity that the patent is being infringed.

We execute patent licensing and intellectual property rights arrangements with users of our patented technologies through willing negotiations without the filing of patent infringement litigation, or through the negotiation of a patent license and intellectual property rights and settlement arrangements in connection with the filing of patent infringement litigation.

## Business Model and Strategy - Overview

The business model associated with the licensing and enforcement activities conducted by our operating subsidiaries is summarized in the following illustration:

### Licensing and Enforcement Business



### Key Elements of Business Strategy

Our intellectual property acquisition, development, licensing and enforcement business strategy, conducted solely by our operating subsidiaries, includes the following key elements:

- Identify Emerging Growth Areas where Patented Technologies will Play a Vital Role

The patent process breeds, encourages and sustains innovation and invention by granting a limited monopoly to the inventor in exchange for sharing the invention with the public. Certain technologies, including several of the technologies controlled by our operating subsidiaries, some of which are summarized below, become core technologies in the way products and services are manufactured, sold and delivered by companies across a wide array of industries. Our operating subsidiaries identify core, patented technologies that have been or are anticipated to be widely adopted by third parties in connection with the manufacture or sale of products and services.

- Contact and Form Alliances with Owners of Core, Patented Technologies

Often individual inventors and small companies have limited resources and/or expertise and are unable to effectively address the unauthorized use of their patented technologies. Individual inventors and small companies may lack sufficient capital resources and may also lack in-house personnel with patent licensing and/or enforcement expertise or experience, which may make it difficult to effectively and efficiently out-license and/or enforce their patented technologies.

For years, many large companies have earned substantial revenue licensing patented technologies to third parties. Other companies that do not have internal licensing resources and expertise may have continued to record the capitalized carrying value of their core and/or non-essential intellectual property in their financial statements, without deriving income from their intellectual property or realizing the potential value of their intellectual property assets. Securities and financial reporting regulations require these companies to periodically evaluate and potentially reduce or write-off these intellectual property assets if they are unable to substantiate these reported carrying values.

Our operating subsidiaries seek to enter into business agreements with owners of intellectual property that do not have experience or expertise in the areas of intellectual property licensing and enforcement, or that do not possess the in-house resources to devote to intellectual property licensing and enforcement activities, or that, for any number of strategic business reasons, desire to more efficiently and effectively outsource their intellectual property licensing and enforcement activities.

- *Effectively and Efficiently Evaluate Patented Technologies for Acquisition, Licensing and Enforcement*

Subtleties in the language of a patent, recorded interactions with the patent office, and the evaluation of prior art and literature can make a significant difference in the potential licensing and enforcement revenue derived from a patent or patent portfolio. Our specialists are trained and skilled in these areas. It is important to identify potential problem areas, if any, and determine whether potential problem areas can be overcome, prior to acquiring a patent portfolio or launching an effective licensing program. We have developed processes and procedures for identifying problem areas and evaluating the strength of a patent portfolio before the decision is made to allocate resources to an acquisition or to launch an effective licensing and enforcement effort.

*Patent Portfolio Evaluation.* The processes and procedures employed in connection with the evaluation of a specific patent portfolio for acquisition, licensing and enforcement are tailored and unique to each specific situation, and can vary widely based on the specific facts and circumstances of a specific patent portfolio, such as the related technology, related industry and certain other factors. Some of the key components of our processes and procedures may include:

- Utilizing our staff of in-house intellectual property business development executives, patent attorneys, intellectual property licensing executives, and technology engineers to conduct our tailored patent acquisition and evaluation processes and procedures. We may also leverage the expertise of external specialists and technology consultants.
- Identifying emerging growth areas where patented technologies will play a vital role in connection with the manufacture or sale of products and services.
- Identifying core, patented technologies that have been or are anticipated to be widely adopted by third parties in connection with the manufacture or sale of products and services.
- Considering the impact of subtleties in the language of a patent, recorded interactions with the patent office, evaluating prior art and literature and considering the impact on the potential licensing and enforcement revenue that can be derived from a patent or patent portfolio.
- Evaluating the strength of a patent portfolio, including consideration of the types of claims and the number of claims potentially infringed by third parties, before the decision is made to allocate resources to an acquisition or an effective licensing and enforcement effort.
- Identifying and considering potential problem areas, if any, and determining whether potential problem areas can be overcome prior to acquiring a patent portfolio or launching an effective licensing program.
- Identifying potential infringers, industries within which the potential infringers exist, longevity of the patented technology, and a variety of other factors that directly impact the magnitude and potential success of a licensing and enforcement program.

- *Purchase or Acquire the Rights to Patented Technologies*

After evaluation, our operating subsidiaries may elect to purchase the patented technology, or acquire the exclusive right to license the patented technology in all or in specific fields of use. The original owner of the patent or patent rights will typically receive an upfront acquisition payment, or retain the right to a portion of the net revenues generated from a patent portfolio's licensing and enforcement program, or a combination of the two. Our operating subsidiaries generally control the licensing and enforcement process and utilize experienced in-house personnel to reduce outside costs and to ensure that the necessary capital and expertise is allocated and deployed in an efficient and cost effective manner.

- *Successfully License and Enforce Patents with Significant Royalty Potential*

As part of the patent evaluation process employed by our operating subsidiaries, significant consideration is also given to the identification of potential infringers, industries within which the potential infringers exist, longevity of the patented technology, and a variety of other factors that directly impact the magnitude and potential success of a licensing and enforcement program. Our specialists are trained in evaluating potentially infringing technologies and in presenting the claims of our patents and demonstrating how they apply to companies we believe are using our technologies in their products or services. These presentations can take place in a non-adversarial business setting, but can also occur through the litigation process, if necessary. Ultimately, we execute patent licensing arrangements with

users of our patented technologies through licensing negotiations without the filing of patent infringement litigation, or through the negotiation of license and settlement arrangements in connection with the filing of patent infringement litigation.

## Patented Technologies

Currently, on a consolidated basis, our operating subsidiaries own or control the rights to over 250 patent portfolios, with future patent expiration dates ranging from 2013 to approximately 2028, and covering technologies used in a wide variety of industries, a sample of which includes the following:

<b>Advertising</b>	<b>Digital Media</b>	<b>Semiconductor/MEMS</b>
Electronic Message Advertising	DMT®	Aligned Wafer Bonding
Internet Radio Advertising	Integrated Access	Chip-Stacking
Interstitial Internet Advertising	Interactive Content in a Cable Distribution System	Computer Architecture and Power Management
Online Ad Tracking	Television Data Display	Computer Memory Cache Coherency
Pop-up Internet Advertising	Television Signal Scrambling	Digital Signal Processing Architecture
	Video Encoding	Dynamic Manufacturing Modeling
<b>Automotive</b>		Dynamic Random Access Memory
Improved Anti-Trap Safety Technology for Vehicles	<b>Energy/Lighting</b>	Enhanced DRAM Architecture
Improved Lighting	Fluid Flow Control and Monitoring Technology	Flash Memory
User Programmable Engine Control	Lighting Ballast	High Performance Computer Architecture
Vehicle Anti-Theft Parking Systems	Lighting Control	Improved Memory Manufacturing
Vehicle Maintenance		MEMS
Vehicle Occupant Sensing	<b>Internet/Ecommerce/Business Methods</b>	Microprocessor Enhancement
	Authorized Spending Accounts	Microprocessor Memory Management
<b>Communications</b>	Automated Communications	Power Management Within Integrated Circuits
Audio Communications Fraud Detection	Automated Notification of Tax Return Status	
Broadcast Data Retrieval	Automated Tax Reporting	<b>Software</b>
Messaging	Consumer Rewards	Automatic Image Labeling
Optical Switching	Digital Newspaper Delivery	Business Process Modeling (BPM)
Peer to Peer Communications	Distributed Data Management and Synchronization	Compiler
Virtual Server	Document Retrieval Using Global Word Co-Occurrence Patterns	Computer Simulations
	Electronic Securities Trading	Document Generation
<b>Computers/Peripherals/Printers</b>	Energy Trading	Facilities Operation Management System
Camera Support	Enhanced Internet Navigation	File Systems and Development Environments
Color Correction for Video Graphics Systems	Greeting Card	Gemstone Grading
Computer Storage Restoration	Information Portal Software	Manufacturing Data Transfer
Disk Array Systems	Item Identification	Network Monitoring
Embedded Broadcast Data	Online Auction Guarantees	Product Activation
High Quality Image Processing	Online Promotion	Resource Scheduling
High Resolution Optics	Portable Credit Card Processing	Software Activation
Improved Commercial Print	Portable Storage Devices with Links	Software Installation
	Videoconferencing	Software License Management



Improved Printing	Website Crawling	Spreadsheet Automation
Laptop Connectivity		Targeted Content Delivery
Line Screen Printing	<b>Mechanical</b>	Text Auto-Completion
Network Remote Access	Impact Instrument	Virtual Computer Workspaces
Parallel Processing with Shared Memory		
Pointing Device	<b>Medical</b>	<b>Wireless</b>
Remote Management of Imaging Devices	Biosensor	Child-Friendly Secure Mobile Phones
	Catheter Insertion	GPS
<b>Consumer Electronics</b>	Hearing Aid ECS	Location Based Services
Audio Storage and Retrieval System	Heated Surgical Blades	Mobile Computer Synchronization
Compact Disk	Intraluminal Device	Mobile Computing
Computer Graphics	Laparoscopic Surgery	Radio Communication with Graphics
Continuous TV Viewer Measuring	Medical Image Manipulation	Telematics
Digital Video Enhancement	Medical Image Stabilization	Wireless Data
Digital Video Production	Medical Monitoring	Wireless Digital Messaging
Image Resolution Enhancement	Picture Archiving & Communication Systems	Wireless LAN
Micromirror Digital Display	Purifying Nucleic Acids	Wireless Multimedia
Optical Recording	Shape Memory Alloys	
Projector	Surgical Catheter	
Workspace with Moving Viewpoint	Wireless Monitoring	
<b>Database</b>	<b>Security</b>	
Database Access	Copy Protection	
Database Management	Credit Card Fraud Protection	
Database Retrieval	Encrypted Media & Playback Devices	
Electronic Address List Management	Enterprise Content Management	
File Locking in Shared Storage Networks	Physical Access Control	
Information Storage, Searching and Retrieval		
Multi-Dimensional Database Compression		
Records Management		
Relational Database Access		
Rule Based Monitoring		
Storage Area Network		
Storage Technology		

Revenues for the periods presented include revenues generated from several of the portfolios summarized above and other technology patent portfolios owned or controlled by us. Refer to Item 7. "Management's Discussion and Analysis of Financial Condition and Results of Operations- Overview" for a summary of patent portfolios generating revenues for the applicable periods presented.

### Patent Enforcement Litigation

Our operating subsidiaries are often required to engage in litigation to enforce their patents and patent rights. Certain of our operating subsidiaries are parties to ongoing patent enforcement related litigation, alleging infringement by third parties of certain of the patented technologies owned or controlled by our operating subsidiaries.

### Competition

We expect to encounter increased competition in the area of patent acquisitions and enforcement. This includes an increase in the number of competitors seeking to acquire the same or similar patents and technologies that we may seek to acquire. Entities including Intellectual Ventures, Wi-LAN, MOSAID, Round Rock Research LLC, IPvalue Management Inc.,

Vringo Inc. and Pendrell Corporation compete in acquiring rights to patents, and we expect more entities to enter the market.

We also compete with venture capital firms, strategic corporate buyers and various industry leaders for technology acquisitions and licensing opportunities. Many of these competitors may have more financial and human resources than our operating subsidiaries. As we become more successful, we may find more companies entering the market for similar technology opportunities, which may reduce our market share in one or more technology industries that we currently rely upon to generate future revenue.

Other companies may develop competing technologies that offer better or less expensive alternatives to our patented technologies that we may acquire and/or out-license. Many potential competitors may have significantly greater resources than the resources that our operating subsidiaries possess. Technological advances or entirely different approaches developed by one or more of our competitors could render certain of the technologies owned or controlled by our operating subsidiaries obsolete and/or uneconomical.

### **Employees**

As of December 31, 2012, on a consolidated basis, we had 55 full-time employees. Neither we nor any of our subsidiaries are a party to any collective bargaining agreement. We consider our employee relations to be good.

## ITEM 1A. RISK FACTORS

*The following is a summary of certain risks we face in our business. They are not the only risks we face. Additional risks that we do not yet know of or that we currently believe are immaterial may also impair our business operations. If any of the following risks actually occur, our business, financial condition and results of operations could be materially adversely affected, and the trading price of our common stock could decline significantly. All intellectual property acquisition, development, licensing and enforcement activities are conducted solely by certain of our wholly and majority-owned operating subsidiaries.*

### **Risks Related to Our Business**

***We have a history of losses and may incur additional losses in the future.***

Despite reporting net income of \$59.5 million, \$21.1 million and \$34.1 million for the years ended December 31, 2012, 2011 and 2010, respectively, on a cumulative basis, we have sustained substantial losses since our inception. As of December 31, 2012, our accumulated deficit was \$5.6 million. As of December 31, 2012, we had approximately \$311.3 million in cash, cash equivalents and investments on hand, and working capital of \$302.6 million. We expect to continue incurring significant legal, marketing and general and administrative expenses in connection with our operations. As a result, we anticipate that we may incur losses in the future. However, we believe our current cash, cash equivalents and investments will be sufficient to finance our anticipated capital and operating requirements for at least the next twelve months.

***If we encounter unforeseen difficulties with our business or operations in the future that require us to obtain additional working capital, and we cannot obtain additional working capital on favorable terms, or at all, our business may suffer.***

Our consolidated cash, cash equivalents and investments on hand totaled \$311.3 million and \$323.3 million at December 31, 2012 and 2011, respectively. To date, we have relied primarily upon net cash flows from our operations and from the public and private sale of equity securities to generate the working capital needed to finance our operations.

We may encounter unforeseen difficulties with our business or operations in the future that may deplete our capital resources more rapidly than anticipated. As a result, we may be required to obtain additional working capital in the future through bank credit facilities, public or private debt or equity financings, or otherwise. If we are required to raise additional working capital in the future, such financing may be unavailable to us on favorable terms, if at all, or may be dilutive to our existing stockholders. If we fail to obtain additional working capital as and when needed, such failure could have a material adverse impact on our business, results of operations and financial condition.

***Failure to effectively manage our growth could place strains on our managerial, operational and financial resources and could adversely affect our business and operating results.***

Our growth has placed, and is expected to continue to place, a strain on our managerial, operational and financial resources and systems. Further, as our subsidiary companies' businesses grow, we will be required to continue to manage multiple relationships. Any further growth by us or our subsidiary companies, or an increase in the number of our strategic relationships, may place additional strain on our managerial, operational and financial resources and systems. Although we may not grow as we expect, if we fail to manage our growth effectively or to develop and expand our managerial, operational and financial resources and systems, our business and financial results will be materially harmed.

***Our future success depends on our ability to expand our organization to match the growth of our subsidiaries.***

As our operating subsidiaries grow, the administrative demands upon us and our operating subsidiaries will grow, and our success will depend upon our ability to meet those demands. These demands include increased accounting, management, legal services, staff support, and general office services. We may need to hire additional qualified personnel to meet these demands, the cost and quality of which is dependent in part upon market factors outside of our control. Further, we will need to effectively manage the training and growth of our staff to maintain an efficient and effective workforce, and our failure to do so could adversely affect our business and operating results.

***Potential acquisitions may present risks, and we may be unable to achieve the financial or other goals intended at the time of any potential acquisition.***

Our future growth depends, in part, on our ability to acquire patented technologies, patent portfolios, or companies holding such patented technologies and patent portfolios. Accordingly, we have engaged in acquisitions to expand our patent

portfolios and we intend to continue to explore such acquisitions. Such acquisitions are subject to numerous risks, including the following:

- our inability to enter into a definitive agreement with respect to any potential acquisition, or if we are able to enter into such agreement, our inability to consummate the potential acquisition;
- difficulty integrating the operations, technology and personnel of the acquired entity;
- our inability to achieve the anticipated financial and other benefits of the specific acquisition;
- our inability to retain key personnel from the acquired company, if necessary;
- difficulty in maintaining controls, procedures and policies during the transition and integration process;
- diversion of our management's attention from other business concerns; and
- failure of our due diligence process to identify significant issues, including issues with respect to patented technologies and patent portfolios, and other legal and financial contingencies.

If we are unable to manage these risks effectively as part of any acquisition, our business could be adversely affected.

***Our revenues are unpredictable, and this may harm our financial condition.***

From January 2005 to the present, our operating subsidiaries have executed our business strategy of acquiring patent portfolios and accompanying patent rights. Currently, on a consolidated basis, our operating subsidiaries own or control the rights to over 250 patent portfolios, which include U.S. patents and certain foreign counterparts, covering technologies used in a wide variety of industries. These acquisitions continue to expand and diversify our revenue generating opportunities. We believe that our cash, cash equivalents and investment balances, anticipated cash flow from operations, proceeds from our 2012 private placement offering of our common stock (refer to "Liquidity and Capital Resources" below) and other external sources of available credit, will be sufficient to meet our cash requirements through at least March 2014 and for the foreseeable future. However, due to the nature of our licensing business and uncertainties regarding the amount and timing of the receipt of license and other fees from potential infringers, stemming primarily from uncertainties regarding the outcome of enforcement actions, rates of adoption of our patented technologies, the growth rates of our existing licensees and certain other factors, our revenues may vary significantly from quarter to quarter, which could make our business difficult to manage, adversely affect our business and operating results, cause our quarterly results to fall below market expectations and adversely affect the market price of our common stock.

***Our operating subsidiaries depend upon relationships with others to provide technology-based opportunities that can develop into profitable royalty-bearing licenses, and if they are unable to maintain and generate new relationships, then they may not be able to sustain existing levels of revenue or increase revenue.***

Neither we nor our operating subsidiaries invent new technologies or products; rather, we depend upon the identification and acquisition of new patents and inventions through our relationships with inventors, universities, research institutions, technology companies and others. If our operating subsidiaries are unable to maintain those relationships and to continue to grow new relationships, then they may not be able to identify new technology-based opportunities for sustainable revenue and growth.

Our current or future relationships may not provide the volume or quality of technologies necessary to sustain our business. In some cases, universities and other technology sources may compete against us as they seek to develop and commercialize technologies. Universities may receive financing for basic research in exchange for the exclusive right to commercialize resulting inventions. These and other strategies may reduce the number of technology sources and potential clients to whom we can market our services. If we are unable to maintain current relationships and sources of technology or to secure new relationships and sources of technology, such inability may have a material adverse effect on our operating results and financial condition.

***The success of our operating subsidiaries depends in part upon their ability to retain the best legal counsel to represent them in patent enforcement litigation.***

The success of our licensing business depends upon our operating subsidiaries' ability to retain the best legal counsel

to prosecute patent infringement litigation. As our operating subsidiaries' patent enforcement actions increase, it will become more difficult to find the best legal counsel to handle all of our cases because many of the best law firms may have a conflict of interest that prevents their representation of our subsidiaries.

***Our operating subsidiaries, in certain circumstances, rely on representations, warranties and opinions made by third parties that, if determined to be false or inaccurate, may expose us and our operating subsidiaries to certain material liabilities.***

From time to time, our operating subsidiaries may rely upon representations and warranties made by third parties from whom our operating subsidiaries acquired patents or the exclusive rights to license and enforce patents. We also may rely upon the opinions of purported experts. In certain instances, we may not have the opportunity to independently investigate and verify the facts upon which such representations, warranties, and opinions are made. By relying on these representations, warranties and opinions, our operating subsidiaries may be exposed to liabilities in connection with the licensing and enforcement of certain patents and patent rights which could have a material adverse effect on our operating results and financial condition.

***In connection with patent enforcement actions conducted by certain of our subsidiaries, a court may rule that we or our subsidiaries have violated certain statutory, regulatory, federal, local or governing rules or standards, which may expose us and our operating subsidiaries to certain material liabilities.***

In connection with any of our patent enforcement actions, it is possible that a defendant may request and/or a court may rule that we have violated statutory authority, regulatory authority, federal rules, local court rules, or governing standards relating to the substantive or procedural aspects of such enforcement actions. In such event, a court may issue monetary sanctions against us or our operating subsidiaries or award attorney's fees and/or expenses to a defendant(s), which could be material, and if we or our operating subsidiaries are required to pay such monetary sanctions, attorneys' fees and/or expenses, such payment could materially harm our operating results and our financial position.

### **Risks Related to Our Industry**

***Our exposure to uncontrollable outside influences, including new legislation, court rulings or actions by the United States Patent and Trademark Office, could adversely affect our licensing and enforcement business and results of operations.***

Our licensing and enforcement business is subject to numerous risks from outside influences, including the following:

*New legislation, regulations or rules related to obtaining patents or enforcing patents could significantly increase our operating costs and decrease our revenue.*

Our operating subsidiaries acquire patents with enforcement opportunities and are spending a significant amount of resources to enforce those patents. If new legislation, regulations or rules are implemented either by Congress, the U.S. Patent and Trademark Office, or USPTO, or the courts that impact the patent application process, the patent enforcement process or the rights of patent holders, these changes could negatively affect our expenses and revenue. Recently, United States patent laws were amended with the enactment of the Leahy-Smith America Invents Act, or the America Invents Act, which will take effect on March 16, 2013. The America Invents Act includes a number of significant changes to U.S. patent law. In general, the legislation attempts to address issues surrounding the enforceability of patents and the increase in patent litigation by, among other things, establishing new procedures for patent litigation. For example, the America Invents Act changes the way that parties may be joined in patent infringement actions, increasing the likelihood that such actions will need to be brought against individual parties allegedly infringing by their respective individual actions or activities. At this time, it is not clear what, if any, impact the America Invents Act will have on the operation of our enforcement business. However, the America Invents Act and its implementation could increase the uncertainties and costs surrounding the enforcement of our patented technologies, which could have a material adverse effect on our business and financial condition.

In addition, the U.S. Department of Justice ("DOJ") has conducted reviews of the patent system to evaluate the impact of patent assertion entities on industries in which those patents relate. It is possible that the findings and recommendations of the DOJ could impact the ability to effectively license and enforce standards-essential patents and could increase the uncertainties and costs surrounding the enforcement of any such patented technologies.

Finally, new rules regarding the burden of proof in patent enforcement actions could significantly increase the cost of our enforcement actions, and new standards or limitations on liability for patent infringement could negatively impact our revenue derived from such enforcement actions.

*Trial judges and juries often find it difficult to understand complex patent enforcement litigation, and as a result, we may need to appeal adverse decisions by lower courts in order to successfully enforce our patents.*

It is difficult to predict the outcome of patent enforcement litigation at the trial level. It is often difficult for juries and trial judges to understand complex, patented technologies, and as a result, there is a higher rate of successful appeals in patent enforcement litigation than more standard business litigation. Such appeals are expensive and time consuming, resulting in increased costs and delayed revenue. Although we diligently pursue enforcement litigation, we cannot predict with significant reliability the decisions made by juries and trial courts.

*More patent applications are filed each year resulting in longer delays in getting patents issued by the USPTO.*

Certain of our operating subsidiaries hold and continue to acquire pending patents. We have identified a trend of increasing patent applications each year, which we believe is resulting in longer delays in obtaining approval of pending patent applications. The application delays could cause delays in recognizing revenue from these patents and could cause us to miss opportunities to license patents before other competing technologies are developed or introduced into the market.

*Federal courts are becoming more crowded, and as a result, patent enforcement litigation is taking longer.*

Our patent enforcement actions are almost exclusively prosecuted in federal court. Federal trial courts that hear our patent enforcement actions also hear criminal cases. Criminal cases always take priority over our actions. As a result, it is difficult to predict the length of time it will take to complete an enforcement action. Moreover, we believe there is a trend in increasing numbers of civil lawsuits and criminal proceedings before federal judges, and as a result, we believe that the risk of delays in our patent enforcement actions will have a greater effect on our business in the future unless this trend changes.

*Any reductions in the funding of the USPTO could have an adverse impact on the cost of processing pending patent applications and the value of those pending patent applications.*

The assets of our operating subsidiaries consist of patent portfolios, including pending patent applications before the USPTO. The value of our patent portfolios is dependent upon the issuance of patents in a timely manner, and any reductions in the funding of the USPTO could negatively impact the value of our assets. Further, reductions in funding from Congress could result in higher patent application filing and maintenance fees charged by the USPTO, causing an unexpected increase in our expenses.

*Competition is intense in the industries in which our subsidiaries do business and as a result, we may not be able to grow or maintain our market share for our technologies and patents.*

We expect to encounter competition in the area of patent acquisition and enforcement as the number of companies entering this market is increasing. This includes competitors seeking to acquire the same or similar patents and technologies that we may seek to acquire. Entities including Intellectual Ventures, Wi-LAN, MOSAID, Round Rock Research LLC, IPvalue Management Inc., Vringo Inc. and Pendrell Corporation compete in acquiring rights to patents, and we expect more entities to enter the market. As new technological advances occur, many of our patented technologies may become obsolete before they are completely monetized. If we are unable to replace obsolete technologies with more technologically advanced patented technologies, then this obsolescence could have a negative effect on our ability to generate future revenues.

Our licensing business also competes with venture capital firms and various industry leaders for technology licensing opportunities. Many of these competitors may have more financial and human resources than we do. As we become more successful, we may find more companies entering the market for similar technology opportunities, which may reduce our market share in one or more technology industries that we currently rely upon to generate future revenue.

*Our patented technologies face uncertain market value.*

Our operating subsidiaries have acquired patents and technologies that are in the early stages of adoption in the commercial and consumer markets. Demand for some of these technologies is untested and is subject to fluctuation based upon the rate at which our licensees will adopt our patents and technologies in their products and services.

*As patent enforcement litigation becomes more prevalent, it may become more difficult for us to voluntarily license our patents.*

We believe that the more prevalent patent enforcement actions become, the more difficult it will be for us to voluntarily license our patents. As a result, we may need to increase the number of our patent enforcement actions to cause infringing companies to license the patent or pay damages for lost royalties. This may increase the risks associated with an investment in our company.

***The markets served by our operating subsidiaries are subject to rapid technological change, and if our operating subsidiaries are unable to develop and acquire new technologies and patents, our ability to generate revenues could be substantially impaired.***

The markets served by our operating subsidiaries and their licensees frequently undergo transitions in which products rapidly incorporate new features and performance standards on an industry-wide basis. Products for communications applications and high-speed computing applications, as well as other applications covered by our operating subsidiaries' intellectual property, are based on continually evolving industry standards. Our ability to compete in the future will depend on our ability to identify and ensure compliance with evolving industry standards. This will require our continued efforts and success in acquiring new patent portfolios with licensing and enforcement opportunities. While we expect for the foreseeable future to have sufficient liquidity and capital resources to maintain the level of acquisitions necessary to keep pace with these technological advances, various factors may require us to have greater liquidity and capital resources than we currently expect. If we are unable to acquire new patented technologies and patent portfolios, or to identify and ensure compliance with evolving industry standards, our ability to generate revenues could be substantially impaired and our business and financial condition could be materially harmed.

***Uncertainty in global economic conditions could negatively affect our business, results of operations and financial condition.***

Our revenue-generating opportunities depend on the use of our patented technologies by existing and prospective licensees, the overall demand for the products and services of our licensees, and on the overall economic and financial health of our licensees. Although economic conditions appear to be improving, recent uncertainties in global economic conditions have resulted in a tightening of the credit markets, a low level of liquidity in many financial markets, and extreme volatility in the credit, equity and fixed income markets. If economic conditions do not continue to improve, or if they further deteriorate, many of our licensees' customers, which may rely on credit financing, may delay or reduce their purchases of our licensees' products and services. In addition, the use or adoption of our patented technologies is often based on current and forecasted demand for our licensees' products and services in the marketplace and may require companies to make significant initial commitments of capital and other resources. If negative conditions in the global credit markets delay or prevent our licensees' and their customers' access to credit, overall consumer spending on the products and services of our licensees may decrease and the adoption or use of our patented technologies may slow, respectively. Further, if the markets in which our licensees' participate do not continue to improve, or deteriorate further, this could negatively impact our licensees' long-term sales and revenue generation, margins and operating expenses, which could in turn have an adverse effect on our business, results of operations and financial condition.

In addition, we have significant patent-related intangible assets recorded on our consolidated balance sheets. We will continue to evaluate the recoverability of the carrying amount of our patent-related intangible assets on an ongoing basis, and we may incur substantial impairment charges, which would adversely affect our consolidated financial results. There can be no assurance that the outcome of such reviews in the future will not result in substantial impairment charges. Impairment assessment inherently involves judgment as to assumptions about expected future cash flows and the impact of market conditions on those assumptions. Future events and changing market conditions may impact our assumptions as to prices, costs, holding periods or other factors that may result in changes in our estimates of future cash flows. Although we believe the assumptions we used in testing for impairment are reasonable, significant changes in any one of our assumptions could produce a significantly different result.

### **Risks Related to Our Common Stock**

***The availability of shares for sale in the future could reduce the market price of our common stock.***

In the future, we may issue securities to raise cash for operations and acquisitions. We may also pay for interests in additional subsidiary companies by using shares of our common stock or a combination of cash and shares of our common

stock. We may also issue securities convertible into our common stock. Any of these events may dilute stockholders' ownership interests in our company and have an adverse impact on the price of our common stock.

In addition, sales of a substantial amount of our common stock in the public market, or the perception that these sales may occur, could reduce the market price of our common stock. This could also impair our ability to raise additional capital through the sale of our securities.

***Delaware law and our charter documents contain provisions that could discourage or prevent a potential takeover of our company that might otherwise result in our stockholders receiving a premium over the market price of their shares.***

Provisions of Delaware law and our certificate of incorporation and bylaws could make the acquisition of our company by means of a tender offer, proxy contest or otherwise, and the removal of incumbent officers and directors, more difficult. These provisions include:

- Section 203 of the Delaware General Corporation Law, which prohibits a merger with a 15%-or-greater stockholder, such as a party that has completed a successful tender offer, until three years after that party became a 15%-or-greater stockholder;
- amendment of our bylaws by the stockholders requires a two-thirds approval of the outstanding shares;
- the authorization in our certificate of incorporation of undesignated preferred stock, which could be issued without stockholder approval in a manner designed to prevent or discourage a takeover;
- provisions in our bylaws eliminating stockholders' rights to call a special meeting of stockholders, which could make it more difficult for stockholders to wage a proxy contest for control of our board of directors or to vote to repeal any of the anti-takeover provisions contained in our certificate of incorporation and bylaws; and
- the division of our board of directors into three classes with staggered terms for each class, which could make it more difficult for an outsider to gain control of our board of directors.

Together, these provisions may make the removal of management more difficult and may discourage transactions that could otherwise involve payment of a premium over prevailing market prices for our common stock.

***As a result of the redemption of Acacia Research-CombiMatrix common stock for the common stock of CombiMatrix, we may be subject to certain tax liability under the Internal Revenue Code.***

Our distribution of the common stock of CombiMatrix Corporation, or CombiMatrix, upon completion of the transaction whereby we split-off CombiMatrix, a former component of our life science business, to become an independent publicly-held company, or the Split-Off Transaction, will be tax-free to us if the distribution qualifies under Sections 368 and 355 of the Internal Revenue Code of 1986, as amended, or the Code. If the Split-Off Transaction fails to qualify under Section 355 of the Code, corporate tax would be payable by the consolidated group as of the date of the Split-Off Transaction, of which we are the common parent, based upon the difference between the aggregate fair market value of the assets of CombiMatrix's business and the adjusted tax bases of such business to us prior to the redemption.

We received a private letter ruling from the Internal Revenue Service, or the IRS, to the effect that, among other things, the redemption would be tax free to us and the holders of Acacia Research-Acacia Technologies common stock and Acacia Research-CombiMatrix common stock under Sections 368 and 355 of the Code. The private letter ruling, while generally binding upon the IRS, was based upon factual representations and assumptions and commitments on our behalf with respect to future operations made in the ruling request. The IRS could modify or revoke the private letter ruling retroactively if the factual representations and assumptions in the request were materially incomplete or untrue, the facts upon which the private letter ruling was based were materially different from the facts at the time of the redemption, or if we do not comply with certain commitments made.

If the Split-Off Transaction fails to qualify under Section 355 of the Code, corporate tax, if any, would be payable by the consolidated group of which we are the common parent, as described above. As such, the corporate level tax would be payable by us. CombiMatrix has agreed however, to indemnify us for this and certain other tax liabilities if they result from actions taken by CombiMatrix. Notwithstanding CombiMatrix's agreement to indemnify us, under the Code's consolidated return regulations, each member of our consolidated group, including our company, will be severally liable for these tax liabilities. Further, we may be liable for additional taxes if we take certain actions within two years following the redemption,



as more fully discussed in the immediately following risk factor. If we are found liable to the IRS for these liabilities, the resulting obligation could materially and adversely affect our financial condition, and we may be unable to recover on the indemnity from CombiMatrix.

***Following the redemption of Acacia Research-CombiMatrix common stock for the common stock of CombiMatrix, we may be subject to certain tax liabilities under the Internal Revenue Code for actions taken by us or CombiMatrix following the redemption.***

Even if the distribution of the common stock of CombiMatrix upon completion of the Split-Off Transaction qualifies under Section 368 and 355 of the Code, such distribution will be taxable to us if Section 355(e) of the Code applies to the distribution. Section 355(e) will apply to the distribution if 50% or more of our common stock or of CombiMatrix's common stock, by vote or value, is acquired by one or more persons, other than the holders of Acacia Research-CombiMatrix common stock who received the common stock of CombiMatrix in the redemption, acting pursuant to a plan or a series of related transactions that includes the redemption. Any shares of our common stock, of the Acacia Research-CombiMatrix common stock or of the common stock of CombiMatrix acquired directly or indirectly within two years before or after the redemption generally are presumed to be part of such a plan unless we can rebut that presumption. To prevent applicability of Section 355(e) or to otherwise prevent the distribution from failing to qualify under Section 355 of the Code, CombiMatrix has agreed that, until two years after the redemption, it will not take any of the following actions unless, prior to taking such action, it has obtained, and provided to us, a written opinion of tax counsel or a ruling from the IRS to the effect that such action will not cause the redemption to be taxable to us, which we refer to in this report collectively as Disqualifying Actions:

- merge or consolidate with another corporation;
- liquidate or partially liquidate;
- sell or transfer all or substantially all of its assets;
- redeem or repurchase its stock (except in certain limited circumstances); or
- take any other action which could reasonably be expected to cause Section 355(e) to apply to the distribution.

Further, if we take any Disqualifying Action, we may be subject to additional tax liability. Many of our competitors are not subject to similar restrictions and may issue their stock to complete acquisitions, expand their product offerings and speed the development of new technology. Therefore, these competitors may have a competitive advantage over us. Substantial uncertainty exists on the scope of Section 355(e), and we may have undertaken, may contemplate undertaking or may otherwise undertake in the future transactions which may cause Section 355(e) to apply to the redemption notwithstanding our desire or intent to avoid application of Section 355(e). Accordingly, we cannot provide you any assurance that we will not be liable for taxes if Section 355(e) applies to the redemption.

***We may fail to meet market expectations because of fluctuations in quarterly operating results, which could cause the price of our common stock to decline.***

Our reported revenues and operating results have fluctuated in the past and may continue to fluctuate significantly from quarter to quarter in the future. It is possible that in future periods, revenues could fall below the expectations of securities analysts or investors, which could cause the market price of our common stock to decline. The following are among the factors that could cause our operating results to fluctuate significantly from period to period:

- the dollar amount of agreements executed in each period, which is primarily driven by the nature and characteristics of the technology being licensed and the magnitude of infringement associated with a specific licensee;
- the specific terms and conditions of agreements executed in each period and the periods of infringement contemplated by the respective payments;
- fluctuations in the total number of agreements executed;
- fluctuations in the sales results or other royalty-per-unit activities of our licensees that impact the calculation of license fees due;
- the timing of the receipt of periodic license fee payments and/or reports from licensees;

- fluctuations in the net number of active licensees period to period;
- costs related to acquisitions, alliances, licenses and other efforts to expand our operations;
- the timing of payments under the terms of any customer or license agreements into which our operating subsidiaries may enter; and
- expenses related to, and the timing and results of, patent filings and other enforcement proceedings relating to intellectual property rights, as more fully described in this section.

***Technology company stock prices are especially volatile, and this volatility may depress the price of our common stock.***

The stock market has experienced significant price and volume fluctuations, and the market prices of technology companies have been highly volatile. We believe that various factors may cause the market price of our common stock to fluctuate, perhaps substantially, including, among others, the following:

- announcements of developments in our patent enforcement actions;
- developments or disputes concerning our patents;
- our or our competitors' technological innovations;
- developments in relationships with licensees;
- variations in our quarterly operating results;
- our failure to meet or exceed securities analysts' expectations of our financial results;
- a change in financial estimates or securities analysts' recommendations;
- changes in management's or securities analysts' estimates of our financial performance;
- changes in market valuations of similar companies;
- the current sovereign debt crises affecting several countries in the European Union and concerns about sovereign debt of the United States;
- announcements by us or our competitors of significant contracts, acquisitions, strategic partnerships, joint ventures, capital commitments, new technologies, or patents; and
- failure to complete significant transactions.

For example, the NASDAQ-100 Technology Sector Index (NDXT) had a range of \$1,253.07 - \$1,559.13 during the 52-weeks ended December 31, 2012 and the NASDAQ Composite Index (IXIC) had a range of \$2,627.23 - \$3,196.93 over the same period. Over the same period, our common stock fluctuated within a range of \$19.86 - \$44.98.

The financial crisis affecting the banking system and financial markets and the uncertainty in global economic conditions, which began in late 2007 and has continued throughout 2012, have resulted in a tightening in the credit markets, a low level of liquidity in many financial markets, and extreme volatility in the credit, equity and fixed income markets. As noted above, our stock price, like many others, has fluctuated significantly in recent periods and if investors have concerns that our business, operating results and financial condition will be negatively impacted by global economic conditions, our stock price could continue to fluctuate significantly in future periods.

In addition, we believe that fluctuations in our stock price during applicable periods can also be impacted by court rulings and/or other developments in our patent licensing and enforcement actions. Court rulings in patent enforcement actions are often difficult to understand, even when favorable or neutral to the value of our patents and our overall business, and we believe that investors in the market may overreact, causing fluctuations in our stock prices that may not accurately reflect the impact of court rulings on our business operations and assets.

In the past, companies that have experienced volatility in the market price of their stock have been the objects of securities class action litigation. If our common stock was the object of securities class action litigation, it could result in substantial costs and a diversion of management's attention and resources, which could materially harm our business and financial results.

***We do not anticipate declaring any cash dividends on our common stock.***

We have never declared or paid cash dividends on our common stock and do not plan to pay any cash dividends in the near future. Our current policy is to retain all funds and any earnings for use in the operation and expansion of our business. If we do not pay dividends, our stock may be less valuable to you because a return on your investment will only occur if our stock price appreciates.

#### **ITEM 1B. UNRESOLVED STAFF COMMENTS**

None.

#### **ITEM 2. PROPERTIES**

Our principal executive, corporate and administrative offices are located in Newport Beach, California, where we lease approximately 17,981 square feet of office space, under a lease agreement that expires in June 2016. Our primary operating subsidiary, Acacia Research Group, LLC, and its subsidiaries, are headquartered in Plano, Texas, where we lease approximately 12,137 square feet of office space, under a lease agreement that expires in June 2020. Certain of our operating subsidiaries also maintain additional leased office space in Atlanta, Georgia and Alexandria, Virginia. We believe that our facilities are adequate, suitable and of sufficient capacity to support our immediate needs.

#### **ITEM 3. LEGAL PROCEEDINGS**

In the ordinary course of business, we are the subject of, or party to, various pending or threatened legal actions, including various counterclaims in connection with our intellectual property enforcement activities. We believe that any liability arising from these actions will not have a material adverse effect on our consolidated financial position, results of operations or cash flows.

In connection with any of our patent enforcement actions, it is possible that a defendant may request and/or a court may rule that we have violated statutory authority, regulatory authority, federal rules, local court rules, or governing standards relating to the substantive or procedural aspects of such enforcement actions. In such event, a court may issue monetary sanctions against us or our operating subsidiaries or award attorney's fees and/or expenses to a defendant(s), which could be material, and if required to be paid by us or our operating subsidiaries, could materially harm our operating results and our financial position.

#### **ITEM 4. MINE SAFETY DISCLOSURES**

None.

## PART II

### ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

#### General

Our common stock trades on The NASDAQ Global Select Market under the symbol "ACTG." Prior to December 16, 2002, our only class of common stock traded on the NASDAQ National Market System under the symbol "ACRI."

#### Price Range of Common Stock

The high and low sales prices for our common stock as reported by The NASDAQ Global Select Market for the periods indicated are shown in the table below. Such prices are inter-dealer prices without retail markups, markdowns or commissions and may not necessarily represent actual transactions.

	2012				2011			
	Fourth Quarter	Third Quarter	Second Quarter	First Quarter	Fourth Quarter	Third Quarter	Second Quarter	First Quarter
High	\$27.80	\$40.32	\$44.98	\$43.82	\$43.83	\$47.24	\$41.89	\$36.44
Low	\$19.86	\$23.24	\$32.44	\$34.75	\$28.32	\$32.39	\$31.35	\$22.12

#### Holder of Common Stock

On February 25, 2013, there were approximately 115 owners of record of our common stock. The majority of the outstanding shares of our common stock are held by a nominee holder on behalf of an indeterminable number of ultimate beneficial owners.

#### Purchases of Equity Securities by the Issuer and Affiliated Purchasers

On November 16, 2012, we announced that our Board of Directors authorized a program for repurchases of shares of our outstanding common stock. Under the stock repurchase program, effective November 16, 2012, we are authorized to purchase in the aggregate up to \$100 million of our common stock through the period ending May 15, 2013. Repurchases may be made from time to time by us in the open market or in block purchases in compliance with applicable SEC rules. The following are our monthly stock repurchases for the fourth quarter of fiscal year 2012, all of which were purchased as part of publicly announced plans or programs:

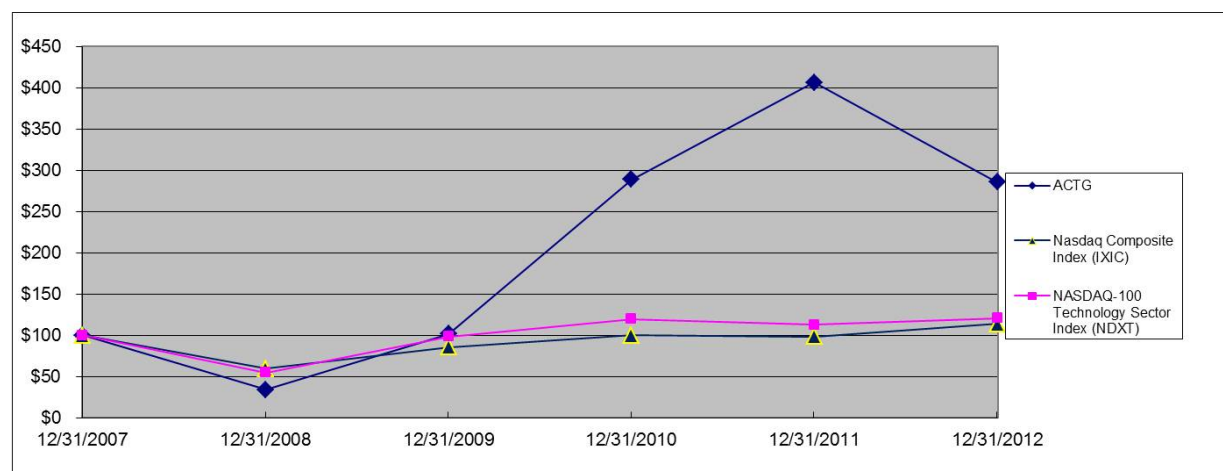
	Total Number of Shares Purchased	Average Price paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Approximate Dollar Value of Shares that May Yet be Purchased under the Plans or Programs
November 16, 2012 - November 30, 2012	256,262	\$ 21.58	256,262	\$ 94,470,000
December 1, 2012 - December 31, 2012	873,146	\$ 24.26	873,146	\$ 73,268,000
	<u>1,129,408</u>		<u>1,129,408</u>	

The repurchases were made using existing cash resources and occurred in the open market.

## Stock Price Performance Graph

The following stock price performance graph shall not be deemed “filed” for purposes of Section 18 of the Exchange Act, or otherwise subject to the liabilities under that Section and shall not be deemed to be incorporated by reference into any of our filings under the Securities Act.

The Stock Performance Graph depicted below compares the yearly change in our cumulative total stockholder return for the last five fiscal years with the cumulative total return of The NASDAQ Stock Market (U.S.) Composite Index and the NASDAQ-100 Technology Sector Index.



	2008	2009	2010	2011	2012
Acacia Research Corporation common stock	\$34	\$101	\$289	\$407	\$286
Nasdaq Composite Index (IXIC)	\$59	\$86	\$100	\$98	\$114
NASDAQ-100 Technology Sector Index (NDXT)	\$55	\$98	\$120	\$113	\$121

The graph covers the period from December 31, 2007 to December 31, 2012. Cumulative total returns are calculated assuming that \$100 was invested on December 31, 2007, in our common stock, in the NASDAQ Composite Index, and in the NASDAQ-100 Technology Sector Index, and that all dividends, if any, were reinvested. Stockholder returns over the indicated period should not be considered indicative of future stock prices or shareholder returns.

## Dividend Policy

To date, we have not declared or paid any cash dividends with respect to our common stock, and the current policy of our board of directors is to retain earnings, if any, to provide for our growth and the growth of our operating subsidiaries. Consequently, we do not expect to pay any cash dividends in the foreseeable future. Further, our proposed operations may not generate the revenues and cash flow necessary to declare a cash dividend or we may not have legally available funds to pay dividends.

## ITEM 6. SELECTED FINANCIAL DATA

The consolidated selected balance sheet data as of December 31, 2012 and 2011 and the consolidated selected statements of income data for the years ended December 31, 2012, 2011 and 2010 set forth below have been derived from our audited consolidated financial statements included elsewhere herein, and should be read in conjunction with those financial statements (including notes thereto). The consolidated selected balance sheet data as of December 31, 2009, 2008 and 2007 and the consolidated selected statements of income (loss) data for the years ended December 31, 2008 and 2007 have been derived from audited consolidated financial statements not included herein, but which were previously filed with the SEC.

### Consolidated Statements of Operations Data (In thousands, except share and per share data)

	For the Years Ended December 31,				
	2012	2011	2010	2009	2008
Revenues and other operating income <sup>(1)</sup>	\$ 250,727	\$ 184,707	\$ 131,829	\$ 67,340	\$ 48,227
Inventor royalties and contingent legal fees expense - patents <sup>(1)</sup>	50,679	91,669	45,198	31,618	27,424
Litigation and licensing expenses - patents	21,591	13,005	13,891	14,055	6,900
Amortization of patents	39,019	9,745	6,931	4,634	6,043
Marketing, general and administrative expenses (including non-cash stock compensation expense)	54,083	35,693	25,067	21,070	21,130
Research, consulting and other expenses - business development	4,943	4,338	2,121	1,689	933
Operating income (loss)	80,412	30,257	38,621	(5,726)	(14,203)
Interest and investment income	937	96	135	302	570
Income (loss) from continuing operations before provision for income taxes	81,349	30,353	38,756	(5,424)	(13,633)
Provision for income taxes	(22,060)	(8,708)	(1,740)	(209)	(124)
Net income (loss) from continuing operations including noncontrolling interests in operating subsidiaries	59,289	21,645	37,016	(5,633)	(13,757)
Net loss (income) attributable to noncontrolling interests in operating subsidiaries	164	(539)	(2,965)	(5,657)	—
Net income (loss) attributable to Acacia Research Corporation	59,453	21,106	34,051	(11,290)	(13,757)
<b>Net income (loss) per common share attributable to Acacia Research Corporation:</b>					
Basic earnings per share	\$ 1.26	\$ 0.53	\$ 1.05	\$ (0.38)	\$ (0.47)
Diluted earnings per share	\$ 1.24	\$ 0.51	\$ 0.97	\$ (0.38)	\$ (0.47)
Weighted average number of shares outstanding, basic	47,251,061	39,743,433	32,306,322	29,914,801	29,423,998
Weighted average number of shares outstanding, diluted	48,060,647	41,258,297	35,081,611	29,914,801	29,423,998

### Consolidated Balance Sheet Data (In thousands)

	At December 31,				
	2012	2011	2010	2009	2008
Total assets	\$ 668,717	\$ 352,877	\$ 134,784	\$ 78,256	\$ 73,074
Total liabilities	\$ 50,239	\$ 30,765	\$ 20,931	\$ 22,287	\$ 14,527
Noncontrolling interests in operating subsidiaries	\$ 6,976	\$ 2,163	\$ 2,982	\$ 2,507	\$ —
Acacia Research Corporation Stockholders' equity	\$ 611,502	\$ 319,949	\$ 110,871	\$ 53,462	\$ 58,547

<sup>(1)</sup> Includes verdict insurance proceeds and related costs as described under "Consolidated Results of Operations" below.

### Factors Affecting Comparability:

- Net income attributable to noncontrolling interests in operating subsidiaries, or net income attributable to noncontrolling interests, represents the portion of net income or loss from the licensing and enforcement activities of our majority-owned

operating subsidiaries that are distributable to the operating subsidiary's noncontrolling interest holders pursuant to the underlying operating agreements.

- The increase in provision for income taxes in fiscal years 2012 and 2011 reflects the impact of foreign withholding taxes, totaling \$11.9 million and \$7.6 million, respectively, withheld by the applicable foreign tax authority on revenue agreements executed with third party licensees domiciled in certain foreign jurisdictions during the applicable periods.
- In fiscal years 2012, 2011 and 2010, amortization of patents included the acceleration of patent amortization related to recoupable up-front patent portfolio acquisition costs that were recovered, pursuant to the provisions of the underlying inventor agreements, totaling \$10.6 million, \$3.1 million and \$1.2 million, respectively.
- Marketing, general and administrative expenses included non-cash stock compensation expense totaling \$25.7 million, \$13.6 million, \$7.1 million, \$7.1 million and \$7.4 million in 2012, 2011, 2010, 2009 and 2008, respectively.

## ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion should be read in conjunction with our consolidated financial statements included elsewhere in this Annual Report on Form 10-K. This discussion contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of various factors including the risks we discuss in Item 1A, "Risk Factors," and elsewhere herein.

### General

Our operating subsidiaries acquire, develop, license and enforce patented technologies. Our operating subsidiaries generate revenues and related cash flows from the granting of intellectual property rights for the use of, or pertaining to, patented technologies that our operating subsidiaries own or control. Our operating subsidiaries assist patent owners with the prosecution and development of their patent portfolios, the protection of their patented inventions from unauthorized use, the generation of licensing revenue from users of their patented technologies and, if necessary, with the enforcement against unauthorized users of their patented technologies. We are a leader in licensing patented technologies and have established a proven track record of licensing success with over 1,225 license agreements executed to date, across 143 of our technology licensing and enforcement programs. Currently, on a consolidated basis, our operating subsidiaries own or control the rights to over 250 patent portfolios, which include U.S. patents and certain foreign counterparts, covering technologies used in a wide variety of industries.

The intellectual property acquisition, development, licensing and enforcement business conducted by our operating subsidiaries, is described more fully in Item 1, "Business," of this annual report.

### Overview

Our operating activities for the periods presented were principally focused on the continued development, licensing and enforcement of the patent portfolios owned or controlled by our operating subsidiaries, including the continued pursuit of our ongoing technology licensing and enforcement programs and the commencement of new technology licensing and enforcement programs. In addition, we continued our focus on business development, including the acquisition of several additional patent portfolios by certain of our operating subsidiaries and the continued pursuit of additional opportunities to acquire patent portfolios or partner with patent owners and continue our unique intellectual property licensing, development and enforcement activities.

*Acquisition.* In January 2012, we acquired ADAPTIX, Inc., or ADAPTIX, a pioneer in the development of 4G technologies for wireless systems, for \$150 million, net of cash acquired, as described below and at Note 8 to the consolidated financial statements elsewhere herein. With patents filed as early as 2000, ADAPTIX's research and development efforts have resulted in one of the most significant intellectual property portfolios focused on 4G technologies. With its rapidly growing portfolio of 230 issued and pending patents in 13 countries, ADAPTIX's innovations extend across a broad range of 4G technologies including OFDMA and MIMO.

Operating activities during the periods presented included the following:

	<u>2012</u>	<u>2011</u>	<u>2010</u>
Revenues and other operating income (in thousands)	\$ 250,727	\$ 184,707	\$ 131,829
New agreements executed	138	125	221
Licensing and enforcement programs generating revenues - during the respective period	68	56	58
Licensing and enforcement programs with initial revenues	31	21	31
New patent portfolios	55	40	36
Cumulative number of licensing and enforcement programs generating revenues - inception to date	143	112	91



We measure and assess the performance and growth of the patent licensing and enforcement businesses conducted by our operating subsidiaries based on consolidated revenues (including other operating income) recognized across all of our technology licensing and enforcement programs on a trailing twelve-month basis. Trailing twelve-month revenues during the periods presented were as follows (in thousands, except percentage change values):

As of Date:	Trailing Twelve - Month Revenues	% Change
December 31, 2012	\$ 250,727	22 %
September 30, 2012	205,258	(12)%
June 30, 2012	233,355	5 %
March 31, 2012	222,617	21 %
December 31, 2011	184,707	40 %
December 31, 2010	131,829	—

Our revenues historically have fluctuated period to period, and can vary significantly, based on a number of factors including the following:

- the dollar amount of agreements executed each period, which can be driven by the nature and characteristics of the technology or technologies being licensed and the magnitude of infringement associated with a specific licensee;
- the specific terms and conditions of agreements executed each period including the nature and characteristics of rights granted, and the periods of infringement or term of use contemplated by the respective payments;
- fluctuations in the total number of agreements executed each period;
- the timing, results and uncertainties associated with patent filings and other enforcement proceedings relating to our intellectual property rights;
- the relative maturity of licensing programs during the applicable periods; and
- other external factors.

Although revenues from one or more of our patents or patent portfolios may be significant in a specific reporting period, we believe that none of our individual patents or patent portfolios is individually significant to our licensing and enforcement business as a whole.

Revenues in fiscal year 2012 included fees from the following licensing and enforcement programs:

• 4G Wireless technology <sup>(1)</sup>	• Messaging technology
• Application Authentication technology <sup>(1)</sup>	• Minimally Invasive Surgery technology <sup>(1)(2)</sup>
• Audio Communications Fraud Detection technology	• Mobile Computer Synchronization technology
• Automotive Safety, Navigation and Diagnostics technology <sup>(1)</sup>	• Network Monitoring technology
• Bone Graft Harvesting technology <sup>(1)(2)</sup>	• NOR Flash technology
• Bone Spacer Devices technology <sup>(1)(2)</sup>	• Online Ad Tracking technology
• Bone Wedge technology <sup>(1)(2)</sup>	• Online Auction Guarantee technology
• Camera Support technology	• Online Gaming technology <sup>(1)</sup>
• Consumer Rewards technology <sup>(1)</sup>	• Optical Networking technology
• Data Compression technology	• Optical Recording technology
• DDR SDRAM technology	• Optical Switching technology
• Digital Signal Processing Architecture technology	• Pop-up Internet Advertising technology
• Disk Array Systems & Storage Area Network technology	• Power Management Within Integrated Circuits technology
• DMT® technology	• Power-over-Ethernet technology
• Document Assembly Technology for Printers <sup>(1)</sup>	• Radiation Therapy technology <sup>(1)(2)</sup>
• Document Generation technology	• Rule Based Monitoring technology

- Domain Name Redirection technology<sup>(1)</sup>
- Dynamic Random Access Memory technology<sup>(1)</sup>
- Enhanced Mobile Communications technology<sup>(1)</sup>
- Facilities Operation Management System technology
- Hearing Aid technology<sup>(1)(2)</sup>
- Impact Instrument technology
- Improved Anti-Trap Safety Technology for Vehicles<sup>(1)</sup>
- Improved Lighting technology
- Improved Memory Manufacturing technology<sup>(1)</sup>
- Information Portal Software technology
- Information Storage, Searching and Retrieval technology<sup>(1)</sup>
- Integrated Access technology<sup>(1)</sup>
- Intraluminal Device technology<sup>(1)(2)</sup>
- Lighting Ballast technology
- Location Based Services technology
- Medical Image Manipulation technology<sup>(1)(2)</sup>
- Medical Monitoring technology<sup>(2)</sup>
- MEMS technology
- Semiconductor Memory and Process Patents<sup>(1)</sup>
- Shape Memory Alloys technology<sup>(2)</sup>
- Software Activation technology<sup>(1)</sup>
- Storage technology
- Surgical Access technology<sup>(1)(2)</sup>
- Suture Anchors technology<sup>(1)(2)</sup>
- Targeted Content Delivery & Network File Transfer technology
- Telematics technology
- Unicondylar Knee Replacement technology<sup>(1)(2)</sup>
- User Programmable Engine Control technology
- Video Analytics for Security technology<sup>(1)</sup>
- Video Delivery and Processing technology<sup>(1)</sup>
- Video Encoding technology
- Videoconferencing technology<sup>(1)</sup>
- Visual Data Evaluation technology
- Voice-Over-IP Technology<sup>(1)</sup>
- Website Crawling technology
- Wireless Monitoring technology<sup>(1)(2)</sup>

Revenues in fiscal year 2011 included fees from the following licensing and enforcement programs:

- Audio Communications Fraud Detection technology
- Biosensor technology<sup>(1)(2)</sup>
- Camera Support technology
- Catheter Insertion technology<sup>(1)(2)</sup>
- Computer Architecture and Power Management technology<sup>(1)</sup>
- Computer Graphics technology
- Data Compression technology<sup>(1)</sup>
- Database Retrieval technology<sup>(1)</sup>
- DDR SDRAM technology<sup>(1)</sup>
- Digital Signal Processing Architecture technology
- Digital Video Enhancement technology
- Disk Array Systems & Storage Area Network technology
- DMT® technology
- Document Generation technology<sup>(2)</sup>
- DRAM Memory architecture technology
- Electronic Message Advertising technology
- Facilities Operation Management System technology
- High Performance Computer Architecture technology
- Image Resolution Enhancement technology
- Impact Instrument technology<sup>(1)</sup>
- Magnetic Storage technology<sup>(1)</sup>
- Manufacturing Data Transfer technology
- MEMS technology<sup>(1)</sup>
- Messaging technology<sup>(1)</sup>
- Microprocessor Enhancement technology
- Mobile Computer Synchronization technology
- Network Monitoring technology
- Network Remote Access technology
- NOR Flash technology<sup>(1)</sup>
- Online Auction Guarantee technology
- Optical Recording technology<sup>(1)</sup>
- Optical Switching technology
- Pop-up Internet Advertising technology
- Power Management Within Integrated Circuits technology<sup>(1)</sup>
- Power-over-Ethernet technology<sup>(1)</sup>
- Rule Based Monitoring technology
- Semiconductor Manufacture technology<sup>(1)</sup>
- Shape Memory Alloys technology<sup>(1)(2)</sup>
- Short Messaging in Cellular Telephony technology
- Software Installation technology

- Improved Commercial Print technology
- Improved Lighting technology
- Interactive Content in a Cable Distribution System technology<sup>(1)</sup>
- Interactive Mapping technology
- Item Identification technology
- Lighting Ballast technology
- Lighting Control technology<sup>(1)</sup>
- Location Based Services technology
- Storage technology
- Targeted Content Delivery technology<sup>(1)</sup>
- Telematics technology
- User Programmable Engine Control technology<sup>(1)</sup>
- Video Encoding technology<sup>(1)</sup>
- Virtual Server technology
- Visual Data Evaluation technology
- Website Crawling technology

Revenues in fiscal year 2010 included fees from the following licensing and enforcement programs:

- Audio Communications Fraud Detection technology
- Authorized Spending Accounts technology
- Automatic Image Labeling technology<sup>(1)</sup>
- Business Process Modeling (BPM) technology<sup>(1)</sup>
- Camera Support technology<sup>(1)</sup>
- Child-friendly Secure Mobile Phones technology
- Compiler technology<sup>(1)</sup>
- Computer Graphics technology<sup>(1)</sup>
- Credit Card Fraud Protection technology
- Database Access technology
- Database Management technology
- Digital Signal Processing Architecture technology<sup>(1)</sup>
- Digital Video Enhancement technology<sup>(1)</sup>
- Disk Array Systems & Storage Area Network technology<sup>(1)</sup>
- DMT® technology
- Document Generation technology
- DRAM Memory Architecture technology<sup>(1)</sup>
- Encrypted Media & Playback Devices technology
- Facilities Operation Management System technology<sup>(1)</sup>
- File Locking In Shared Storage Networks technology
- High Performance Computer Architecture technology
- Image Resolution Enhancement technology
- Improved Commercial Print technology<sup>(1)</sup>
- Improved Lighting technology<sup>(1)</sup>
- Information Portal Software technology<sup>(1)</sup>
- Interactive Mapping technology<sup>(1)</sup>
- Internet Radio Advertising technology
- Item Identification technology<sup>(1)</sup>
- Lighting Ballast technology
- Location Based Services technology
- Manufacturing Data Transfer technology<sup>(1)</sup>
- Medical Image Stabilization technology
- Medical Monitoring technology<sup>(1)</sup>
- Microprocessor Enhancement technology<sup>(1)</sup>
- Mobile Computer Synchronization technology<sup>(1)</sup>
- Multi-Dimensional Database Compression technology
- Network Monitoring technology<sup>(1)</sup>
- Network Remote Access technology<sup>(1)</sup>
- Online Ad Tracking technology<sup>(1)</sup>
- Online Auction Guarantee technology
- Online Newsletters with Links technology<sup>(1)</sup>
- Online Promotion technology
- Optical Switching technology<sup>(1)</sup>
- Picture Archiving & Communications System technology
- Pop-up Internet Advertising technology
- Projector technology
- Records Management technology<sup>(1)</sup>
- Rule Based Monitoring technology
- Short Messaging in Cellular Telephony technology<sup>(1)</sup>
- Software Installation technology<sup>(1)</sup>
- Storage technology
- Telematics technology
- Vehicle Occupant Sensing technology<sup>(1)</sup>
- Virtual Computer Workspace technology
- Virtual Server technology
- Visual Data Evaluation technology<sup>(1)</sup>
- Website Crawling technology<sup>(1)</sup>
- Wireless Multimedia technology<sup>(1)</sup>

<sup>(1)</sup> Initial revenues recognized during the applicable period.

<sup>(2)</sup> Revenues were generated from our patent portfolios in the medical technology industry sector.

**Summary of Results of Operations - For Fiscal Years 2012, 2011 and 2010**  
(In thousands, except percentage change values)

	Fiscal Year			% Change	
	2012	2011	2010	2012 vs. 2011	2011 vs. 2010
Revenues	\$ 250,727	\$ 172,256	\$ 131,829	46 %	31 %
Verdict insurance proceeds	—	12,451	—	(100)%	100 %
Total revenues and other operating income	250,727	184,707	131,829	36 %	40 %
Operating costs and expenses**	170,315	154,450	93,208	10 %	66 %
Operating income	80,412	30,257	38,621	166 %	(22)%
Provision for income taxes	(22,060)	(8,708)	(1,740)	153 %	*
Net loss (income) attributable to noncontrolling interests***	164	(539)	(2,965)	(130)%	(82)%
Net income attributable to Acacia Research Corporation	59,453	21,106	34,051	182 %	(38)%

\* Percentage change in excess of 300%

\*\* Includes non-cash stock compensation charges of \$25.7 million, \$13.6 million and \$7.1 million in fiscal years 2012, 2011 and 2010, respectively, included in Marketing, General and Administrative expense in the statements of income. Includes non-cash patent amortization expenses of \$39.0 million, \$9.7 million and \$6.9 million in fiscal years 2012, 2011 and 2010, respectively.

\*\*\*Refer to Note 1 to the notes to consolidated financial statements included elsewhere in this annual report for additional information.

*Overview - Fiscal year 2012 compared with Fiscal Year 2011*

- Revenues and other operating income increased \$66.0 million, or 36%, due primarily to an increase in the average revenue per executed agreement and an increase in the total number of agreements executed in fiscal year 2012.
- In fiscal year 2012, \$41.2 million, or 16.5%, of revenues were generated from our patent portfolios in the medical technology industry sector, as compared to \$8.6 million, or 4.7%, in fiscal year 2011.
- Other operating income in fiscal year 2011 includes verdict insurance proceeds totaling \$12.5 million, as described below under “Consolidated Results of Operations.”
- Cost of Revenues and Other Operating Expenses:
  - Inventor royalties, net income attributable to noncontrolling interests, contingent legal fees, and applicable verdict insurance proceeds related costs, on a combined basis, decreased \$41.0 million, or 45%, as compared to the 36% increase in related revenues and other operating income for the same periods, due primarily to a greater percentage of revenues generated in fiscal year 2012 having no inventor royalty or contingent legal fee arrangement obligations, and lower average inventor royalty and contingent legal fee rates for the portfolios generating revenues in fiscal year 2012.
  - Litigation and licensing expenses-patents increased \$8.6 million, or 66%, to \$21.6 million, due primarily to higher net levels of patent prosecution, litigation support, third-party technical consulting and professional expert expenses associated with our investment in ongoing licensing and enforcement programs and new licensing and enforcement programs commenced since the end of fiscal year 2011.
  - Marketing, general and administrative expenses increased \$18.4 million, or 52%, to \$54.1 million, due primarily to an increase in non-cash stock compensation charges resulting from an increase in the average grant date fair value of restricted shares expensed and an increase in restricted shares vesting in 2012, a net increase in licensing, business development, and engineering personnel since the end of fiscal year 2011, an increase in variable performance-based compensation costs and a net increase in corporate general and administrative costs.
  - Patent amortization increased \$29.3 million, or 300%, to \$39.0 million, due primarily to amortization expense related to new patent portfolios acquired in fiscal year 2012 and a net increase in accelerated patent amortization related to recoupable up-front patent portfolio acquisition costs recovered during fiscal year 2012.
  - Our effective tax rate remained relatively flat at 27% and 29% for fiscal year 2012 and 2011, respectively. Tax expense for fiscal year 2012 and 2011 primarily reflects foreign withholding taxes withheld by the applicable foreign tax authority on revenue agreements executed with third party licensees domiciled in certain foreign jurisdictions, totaling \$11.9 million and \$7.6 million, respectively, and noncash tax expense resulting from the

calculation of tax expense without the excess tax benefit related to the exercise and vesting of equity-based incentive awards for financial statement purposes.

#### *Overview - Fiscal year 2011 compared with Fiscal Year 2010*

- Revenues and other operating income increased \$52.9 million, or 40%, due primarily to an increase in the average revenue per executed agreement, which was partially offset by a decrease in the total number of agreements executed in fiscal year 2011.
- Other operating income includes verdict insurance proceeds totaling \$12.5 million received during fiscal year 2011, as described below under “Consolidated Results of Operations.”
- Cost of Revenues and Other Operating Expenses:
  - Inventor royalties, net income attributable to noncontrolling interests, contingent legal fees, and applicable verdict insurance proceeds related costs, on a combined basis, increased \$43.3 million, or 89%, primarily reflecting the increase in related revenues and other operating income for fiscal year 2011. The increase was greater than the percentage increase in related revenues and other operating income due to, in the aggregate, lower or no inventor royalty or contingent legal fee arrangement obligations associated with a higher percentage of the portfolios generating revenues in fiscal year 2010.
  - Verdict insurance proceeds related costs for fiscal year 2011 totaled \$7.7 million, as described below under “Consolidated Results of Operations”.
  - Litigation and licensing expenses—patents decreased \$886,000, or 6%, to \$13.0 million, due to a lower net level of litigation support, third party technical consulting and professional expert expenses incurred in fiscal year 2011.
  - Marketing, general and administrative expenses increased \$10.6 million, or 42% to \$35.7 million, due primarily to an increase in non-cash stock compensation charges resulting from an increase in the average grant date fair value of restricted shares expensed during fiscal year 2011, an increase in annual one-time variable performance based compensation charges, an increase in other variable performance based compensation charges, a net increase in business development, engineering and other personnel since the end of the prior year period, and a net increase in corporate, general and administrative costs.
  - Patent amortization increased \$2.8 million, or 41% to \$9.7 million, due primarily to the acceleration of patent amortization related to recoupable up-front patent portfolio acquisition costs that were recovered in fiscal year 2011 and an increase in amortization related to new patent portfolios acquired in fiscal year 2011.
  - The increase in provision for income taxes primarily reflects the impact of foreign withholding taxes withheld by the applicable foreign tax authority on revenue agreements executed with third party licensees domiciled in certain foreign jurisdictions, totaling \$7.6 million in fiscal year 2011.

#### **Patent Licensing and Enforcement**

We expect patent-related legal expenses to continue to fluctuate from period to period based on the factors summarized below, in connection with future trial dates and our current and future patent acquisition, development, licensing and enforcement activities. The pursuit of enforcement actions in connection with our licensing and enforcement programs can involve certain risks and uncertainties, including the following:

- Increases in patent-related legal expenses, including, but not limited to, increases in costs billed by outside legal counsel for discovery, depositions, economic analyses, damages assessments, expert witnesses and other consultants, case-related audio/video presentations and other litigation support and administrative costs could increase our operating costs and decrease our revenue generating opportunities;
- Our patented technologies and enforcement actions are complex, and as a result, we may be required to appeal adverse decisions by trial courts in order to successfully enforce our patents;
- New legislation, regulations or rules related to enforcement actions could significantly increase our operating costs and decrease our revenue generating opportunities; and
- Courts may rule that our subsidiaries have violated certain statutory, regulatory, federal, local or governing rules or standards by pursuing such enforcement actions, which may expose us and our operating subsidiaries to material liabilities, which could harm our operating results and our financial position.

## Investments in Patent Portfolios

Our operating subsidiaries intend to sustain the long term growth of our intellectual property licensing and enforcement business through the continued identification and acquisition of, or the rights to, additional core patented technologies, across a wide range of technology areas that have been, or are anticipated to be, widely adopted by third parties in connection with the manufacture or sale of products and services.

In fiscal years 2012, 2011 and 2010, certain of our operating subsidiaries continued to execute their business strategy in the area of patent portfolio acquisitions. In fiscal year 2012, including the acquisition of ADAPTIX, we acquired a total of 55 new patent portfolios with applications over a wide range of technology areas, as compared to 40 new patent portfolios, and 36 new patent portfolios in fiscal years 2011 and 2010, respectively. Patent portfolio acquisition costs in fiscal year 2012 totaled \$328.3 million (including the acquisition of ADAPTIX), as compared to \$14.7 million and \$8.2 million in fiscal years 2011 and 2010, respectively.

Patent portfolio acquisitions in fiscal years 2012, 2011 and 2010 were comprised of the following:

	Number of Patent Portfolios					
	2012	%	2011	%	2010	%
Partnering - revenue share with upfront cash advance and preferred returns	25	45%	7	18%	14	39%
Partnering - revenue share with no upfront cash advance	19	35%	20	50%	21	58%
Outright purchase	10	18%	13	32%	1	3%
Acquisition of ADAPTIX, Inc.	1	2%	—	—%	—	—%
	<u>55</u>	<u>100%</u>	<u>40</u>	<u>100%</u>	<u>36</u>	<u>100%</u>

In general, the majority of acquisition costs incurred for patent portfolios with future inventor royalty obligations are subject to contractual provisions providing for higher percentage returns to our operating subsidiaries early in the licensing and enforcement program until such initial upfront acquisition costs are fully recovered.

The higher level of acquisition costs incurred in the periods presented in part, reflects our continued identification of opportunities to partner with patent owners, including individual inventors, small technology companies, research laboratories, universities, and major technology companies and exchange upfront and / or advanced royalty payments to patent owners, for no or a reduced future inventor royalty percentages, resulting in the potential for higher returns on our investments in connection with future licensing and enforcement activities.

In addition to trailing twelve-month revenues as discussed above, we also measure and assess the performance and growth of the patent licensing and enforcement business conducted by our operating subsidiaries based on the number of patent portfolios owned or controlled by our operating subsidiaries on a consolidated basis. As of December 31, 2012, 2011 and 2010, on a consolidated basis, our operating subsidiaries owned or controlled the rights to approximately 250, 200, and 171 patent portfolios, respectively, which include U.S. patents and certain foreign counterparts covering technologies used in a wide variety of industries.

An increasing number of the patent portfolios acquired during the periods presented were acquired in connection with partnering arrangements executed with major technology companies, reflecting our continued identification of opportunities to partner not only with individual inventors and small to medium size technology companies, but also major well established technology companies with larger patent portfolios.

Acquisitions in fiscal year 2012 included the acquisition of, or the acquisition of rights to, 55 patent portfolios covering a variety of applications and technology industry areas, including the following:

- In January 2012, we acquired patents relating to catheter ablation technology.
- In January 2012, we acquired patents relating to online user registration technology.
- In January 2012, we acquired rights to patents relating to optical networking technology.

- In February 2012, we acquired over 300 patents from Automotive Technologies International relating to numerous automotive safety, navigation and diagnostics technologies.
- In April 2012, we entered into a patent licensing alliance with TeleCommunication Systems, Inc. (TCS) to become the exclusive licensor of TCS' inter-carrier messaging (ICM) patent portfolio.
- In May 2012, we acquired patents, originally issued to Polaroid, covering digital imaging and related technologies.
- In May 2012, we acquired rights to 6 prominent patent portfolios comprising 68 patents covering a wide range of software technologies relating to business intelligence and data analysis, office productivity, virtualization, graphical user interfaces, search, and software development.
- In June 2012, we acquired 7 medtech patent portfolios comprised of over 150 patents and pending applications relating to medical devices, biologics and diagnostic techniques.
- In June 2012, we acquired patents for x-ray powder diffraction technology.
- In June 2012, we acquired 5 patent portfolios with 156 U.S. and international patents from a major semiconductor technology company.
- In June 2012, we acquired patents relating to computer aided design tools.
- In June 2012, we acquired 4 patent portfolios with 48 U.S. and international patents from a major technology company.
- In July 2012, acquired a patent for intraluminal device technology.
- In August 2012, acquired rights to patents for 360 degree view technology.
- In September 2012, acquired a patent for stent graft technology.
- In September 2012, acquired 23 patents covering gas heating and cooling control systems. The acquisition includes an ongoing royalty stream with a major manufacturer.
- In September 2012, acquired patents covering Product Lifecycle Management (“PLM”) technology.
- In September 2012, acquired patents for radio frequency modulation technology used in mobile devices such as smartphones, tablets, and laptops from a major technology company.
- In September 2012, acquired 7 patent portfolios with over 1,900 patents and applications relating to stent grafts, vascular grafts, bypass grafts, graft retrieval technology, graft manufacturing technology, vena cava filter technology and filter retrieval technology from a leading global medical device company.
- In December 2012, acquired patents for Micro-Location Technology.
- In December 2012, acquired patents for Wireless Infrastructure and User Equipment Technology from Nokia Siemens Networks relating to second (2G), third (3G) and fourth (4G) generation wireless technologies.
- In December 2012, acquired rights to patents in the orthopedic technology sector.
- In December 2012, TeleCommunication Systems, Inc. (“TCS”) and a subsidiary of Acacia entered into a patent licensing alliance, whereby the Acacia subsidiary has acquired the rights to a portion of TCS' wireless data synchronization & data transfer patent portfolio.
- In December 2012, acquired patents covering broadband communications technologies such as digital subscriber line (DSL) modems and voice-over-internet-protocol (VoIP) phones.

As of December 31, 2012, certain of our operating subsidiaries had several option agreements with third-party patent portfolio owners regarding the potential acquisition of additional patent portfolios. Future patent portfolio acquisitions will continue to expand and diversify our future revenue generating opportunities.

*Renesas Electronics Corporation.* In August 2010, we entered into a strategic patent licensing alliance with Renesas Electronics Corporation, a premier supplier of advanced semiconductor solutions. Pursuant to this relationship, those patents selected by us and Renesas Electronics from Renesas Electronics' portfolio of over 40,000 patents and patent applications will be assigned to us for patent licensing.

#### **Acacia Intellectual Property Fund, L.P.**

In August 2010, one of our wholly owned subsidiaries became the general partner of the Acacia Intellectual Property Fund, L.P., or the Acacia IP Fund, which was formed in August 2010. The Acacia IP Fund is authorized to raise up to \$250 million. The Acacia IP Fund acquires, licenses and enforces intellectual property consisting primarily of patents, patent rights, and patented technologies.

#### **Critical Accounting Policies**

Our consolidated financial statements are prepared in conformity with accounting principles generally accepted in the United States of America. In preparing these financial statements, we make assumptions, judgments and estimates that can have a significant impact on amounts reported in our consolidated financial statements. We base our assumptions, judgments and estimates on historical experience and various other factors that we believe to be reasonable under the circumstances. Actual results could differ materially from these estimates under different assumptions or conditions. On a regular basis, we evaluate our assumptions, judgments and estimates and make changes accordingly.

We believe that, of the significant accounting policies discussed in Note 2 to our notes to consolidated financial statements, the following accounting policies require our most difficult, subjective or complex judgments:

- revenue recognition;
- stock-based compensation expense;
- valuation of long-lived and intangible assets;
- impairment of marketable securities; and
- accounting for business combinations - acquisition method of accounting.

We discuss below the critical accounting assumptions, judgments and estimates associated with these policies. Historically, our assumptions, judgments and estimates relative to our critical accounting policies have not differed materially from actual results. For further information on our critical accounting policies, refer to Note 2 to the notes to consolidated financial statements included herein.

#### **Revenue Recognition**

As described below, significant management judgments must be made and used in connection with the revenue recognized in any accounting period. Material differences may result in the amount and timing of revenue recognized or deferred for any period, if management made different judgments.

Revenue is recognized when (i) persuasive evidence of an arrangement exists, (ii) all obligations have been performed pursuant to the terms of the agreement, (iii) amounts are fixed or determinable and (iv) collectibility of amounts is reasonably assured.

We make estimates and judgments when determining whether the collectibility of fees receivable from licensees is reasonably assured. We assess the collectibility of fees receivable based on a number of factors, including past transaction history and the credit-worthiness of licensees. If it is determined that collection is not reasonably assured, the fee is recognized when collectibility becomes reasonably assured, assuming all other revenue recognition criteria have been met, which is generally upon receipt of cash for transactions where collectibility may have been an issue. Management's estimates regarding collectibility impact the actual revenues recognized each period and the timing of the recognition of revenues. Our assumptions and judgments regarding future collectibility could differ from actual events and thus materially impact our financial position and results of operations.

In general, our revenue arrangements provide for the payment of contractually determined fees in consideration for the grant of certain intellectual property rights for patented technologies owned or controlled by our operating subsidiaries. These rights typically include some combination of the following: (i) the grant of a non-exclusive, retroactive and future license to manufacture and/or sell products covered by patented technologies owned or controlled by our operating subsidiaries, (ii) a



covenant-not-to-sue, (iii) the release of the licensee from certain claims, and (iv) the dismissal of any pending litigation. The intellectual property rights granted may be perpetual in nature, extending until the expiration of the related patents, or can be granted for a defined, relatively short period of time, with the licensee possessing the right to renew the agreement at the end of each contractual term for an additional minimum upfront payment. Pursuant to the terms of these agreements, our operating subsidiaries have no further obligation with respect to the grant of the non-exclusive retroactive and future licenses, covenants-not-to-sue, releases, and other deliverables, including no express or implied obligation on our operating subsidiaries' part to maintain or upgrade the technology, or provide future support or services. Generally, the agreements provide for the grant of the licenses, covenants-not-to-sue, releases, and other significant deliverables upon execution of the agreement, or upon receipt of the minimum upfront payment for term agreement renewals. As such, the earnings process is complete and revenue is recognized upon the execution of the agreement, when collectibility is reasonably assured, or upon receipt of the minimum upfront fee for term agreement renewals, and when all other revenue recognition criteria have been met.

Depending on the complexity of the underlying revenue arrangement and related terms and conditions, significant judgments, assumptions and estimates may be required to determine when substantial delivery of contract elements has occurred, whether any significant ongoing obligations exist subsequent to contract execution, whether amounts due are collectible and the appropriate period or periods in which, or during which, the completion of the earnings process occurs. Depending on the magnitude of specific revenue arrangements, if different judgments, assumptions and estimates are made regarding contracts executed in any specific period, our periodic financial results may be materially affected.

Our operating subsidiaries are responsible for the licensing and enforcement of their respective patented technologies and pursue third parties that are utilizing their intellectual property without a license or who have under-reported the amount of royalties owed under a license agreement. As a result of these activities, from time to time, our operating subsidiaries may recognize revenues in a current period that relate to infringements by licensees that occurred in prior periods. These recoveries may cause revenues to be higher than expected during a particular reporting period and may not occur in subsequent periods. Differences between amounts initially recognized and amounts subsequently audited or reported as an adjustment to those amounts, are recognized in the period such adjustment is determined as a change in accounting estimate.

The economic terms of the inventor agreements, operating agreements and contingent legal fee arrangements associated with the patent portfolios owned or controlled by our operating subsidiaries, if any, including royalty rates, contingent fee rates and other terms, vary across the patent portfolios owned or controlled by our operating subsidiaries. Inventor royalties, noncontrolling interests and contingent legal fees expenses fluctuate period to period, based on the amount of revenues recognized each period, the terms and conditions of revenue agreements executed each period and the mix of specific patent portfolios with varying economic terms and obligations generating revenues each period. Inventor royalties, noncontrolling interests and contingent legal fees expenses will continue to fluctuate and may continue to vary significantly period to period, based primarily on these factors.

During the years ended December 31, 2012 and 2011 and 2010, we entered into significant agreements with unrelated third parties resolving pending patent matters that resulted in the grant of certain intellectual property rights and recognition of revenues, portions of which were not subject to inventor royalty and contingent legal fee arrangements, as well as the grant of licenses from certain of our operating subsidiaries and recognition of revenues that were subject to inventor royalties and contingent legal fee arrangements. Revenues recognized subject to inventor royalties and contingent legal fees are based on a determination by the respective operating subsidiaries. Depending on the magnitude of specific revenue arrangements, if different judgments are made regarding revenues subject to inventor royalties and contingent legal fees in any specific period, our periodic financial results may be materially affected.

### ***Stock-based Compensation Expense***

Stock-based compensation payments to employees and non-employee directors are recognized as expense in the statements of income. The compensation cost for all stock-based awards is measured at the grant date, based on the fair value of the award (determined using a Black-Scholes option pricing model for stock options and intrinsic value on the date of grant for nonvested restricted stock), and is recognized as an expense over the employee's requisite service period (generally the vesting period of the equity award). Determining the fair value of stock-based awards at the grant date requires significant estimates and judgments, including estimating the market price volatility of our common stock, future employee stock option exercise behavior and requisite service periods.

Stock-based compensation expense is recorded only for those awards expected to vest using an estimated pre-vesting forfeiture rate. As such, we are required to estimate pre-vesting option forfeitures at the time of grant and reflect the impact of estimated pre-vesting option forfeitures on compensation expense recognized. Estimates of pre-vesting forfeitures must be periodically revised in subsequent periods if actual forfeitures differ from those estimates. We consider several factors in

connection with our estimate of pre-vesting forfeitures, including types of awards, employee class, and historical pre-vesting forfeiture data. The estimation of stock awards that will ultimately vest requires judgment, and to the extent that actual results differ from our estimates, such amounts will be recorded as cumulative adjustments in the period the estimates are revised. If actual results differ significantly from these estimates, stock-based compensation expense and our results of operations could be materially impacted. Refer to Notes 2 and 11 to our notes to consolidated financial statements included elsewhere herein.

### ***Valuation of Long-lived and Intangible Assets***

We review long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Factors we consider important, which could trigger an impairment review, include the following:

- significant underperformance relative to expected historical or projected future operating results;
- significant changes in the manner of our use of the acquired assets or the strategy for our overall business;
- significant negative industry or economic trends;
- significant adverse changes in legal factors or in the business climate, including adverse regulatory actions or assessments; and
- significant decline in our stock price for a sustained period.

If a potential impairment exists, a calculation is performed to determine the fair value of the long-lived asset. This calculation is based on a valuation model, which considers the estimated future undiscounted cash flows resulting from the use of the asset, and a discount rate commensurate with the risks involved. Third party appraised values may also be used in determining whether impairment potentially exists. The estimated fair value is compared to the long-lived asset's carrying value to determine whether impairment exists.

As described above, in assessing the recoverability of intangible assets, significant judgment is required in connection with estimates of market values, estimates of the amount and timing of future cash flows, and estimates of other factors that are used to determine the fair value of the respective assets. If these estimates or related projections change in future periods, future intangible asset impairment tests may result in charges to earnings.

### ***Impairment of Marketable Securities***

U.S. generally accepted accounting principles define fair value as the price that would be received for an asset or the exit price that would be paid to transfer a liability in the principal or most advantageous market in an orderly transaction between market participants on the measurement date, and also establishes a fair value hierarchy which requires an entity to maximize the use of observable inputs, where available. The three-level hierarchy of valuation techniques established to measure fair value, is defined as follows:

- Level 1 - Observable Inputs: Quoted prices in active markets for identical investments;
- Level 2 - Pricing Models with Significant Observable Inputs: Other significant observable inputs, including quoted prices for similar investments, interest rates, credit risk, etc.; and
- Level 3 - Unobservable Inputs: Significant unobservable inputs, including the entity's own assumptions in determining the fair value of investments.

We use observable market inputs (quoted market prices) when measuring fair value and are required to use a Level 1 quoted price to measure fair value, whenever possible.

At December 31, 2012 and 2011, our investments were comprised of money market funds (included in cash and cash equivalents in the accompanying consolidated balance sheets), strategic investments in marketable equity securities (included in short term investments in the accompanying consolidated balance sheet as of December 31, 2012), and certain auction rate securities (included in noncurrent investments in the accompanying consolidated balance sheet for 2011 only). All outstanding auction rate securities as of December 31, 2011, were sold during the year ended December 31, 2012. Investments in marketable equity securities are classified as available-for-sale and are reported at fair value, and included in Level 1 of the

valuation hierarchy described above. Investments in auction rate securities are classified as available-for-sale, and are reported at fair value, and included in Level 3 of the valuation hierarchy described above. The fair values of auction rate securities included in Level 3 of the hierarchy of valuation techniques are estimated utilizing an analysis of certain unobservable inputs and by reference to a discounted cash flow analysis. These analyses consider, among other items, the underlying structure of each security, the collateral underlying the security investments, the creditworthiness of the counterparty, the present value of future principal and contractual interest payments discounted at rates considered to be reflective of current market conditions, consideration of the probabilities of default, continued auction failure, or repurchase or redemption at par for each period, and estimates of the time period over which liquidity related issues will be resolved. Observable market data for instruments with similar characteristics to our auction rate securities is also considered when possible.

Significant judgment is required in connection with the assumptions and inputs included in the discounted cash flow analysis and estimates of other factors that are used to determine the fair value of our auction rate securities. If these estimates and assumptions change in future periods, future estimates of the fair value of our auction rate securities may result in additional charges to earnings.

We review impairments associated with our investments to determine the classification of any impairment as “temporary” or “other-than-temporary.” For investments classified as available-for-sale, unrealized losses that are other than temporary are recognized in the consolidated statements of income. An impairment is deemed other than temporary unless (a) we have the ability and intent to hold an investment for a period of time sufficient for recovery of its carrying amount and (b) positive evidence indicating that the investment’s carrying amount is recoverable within a reasonable period of time outweighs any evidence to the contrary. All available evidence, both positive and negative, is considered to determine whether, based on the weight of that evidence, the carrying amount of the investment is recoverable within a reasonable period of time. Refer to Note 7 to our notes to consolidated financial statements included elsewhere herein for information regarding other-than-temporary charges and related recoveries recorded in the consolidated statements of income for the periods presented.

#### ***Accounting for Business Combinations - Acquisition Method of Accounting***

Acquisitions are accounted for in accordance with the acquisition method of accounting under Financial Accounting Standards Board, or FASB, ASC Topic 805, “Business Combinations,” or Topic 805. Topic 805 requires, among other things, that identifiable assets acquired and liabilities assumed be recognized at their fair values as of the acquisition date. Under the acquisition method of accounting, the purchase consideration is allocated to the assets acquired, including tangible assets, patents and other identifiable intangible assets and liabilities assumed, based on their estimated fair market values on the date of acquisition. Any excess purchase price after the initial allocation to identifiable net tangible and identifiable intangible assets is assigned to goodwill. Amounts attributable to patents are amortized using the straight-line method over the estimated economic useful life of the underlying patents. Acquisition accounting includes the establishment of a net deferred tax asset or liability resulting from book tax basis differences related to assets acquired and liabilities assumed on the date of acquisition.

We assess fair value for financial statement purposes using a variety of methods, including the use of present value models and may also reference independent analyses. Amounts recorded as intangible assets, including patents and patent rights, are based on assumptions and estimates, as of the date of acquisition, regarding the amount and timing of projected revenues and costs associated with the licensing and enforcement of patents and patent rights acquired, appropriate risk-adjusted discount rates, rates of technology adoption, market penetration, technological obsolescence, product launch timing, the impact of competition or lack of competition in the market place, tax implications and other factors. Also, upon acquisition, based on several of the estimates and assumptions previously described, we determine the estimated economic useful lives of the acquired intangible assets for amortization purposes.

Management is responsible for determining the fair value of the tangible and identifiable intangible assets acquired and liabilities assumed as of the acquisition date, solely for purposes of allocating the purchase price to the assets acquired and liabilities assumed. Fair value measurements can be highly subjective, and it is possible that other professionals for other purposes, applying reasonable judgment and criteria to the same facts and circumstances, could develop and support a range of alternative estimated amounts. Actual results may vary from projected results.

**Consolidated Results of Operations**  
**Comparison of the Results of Operations for Fiscal Years 2012, 2011 and 2010**

**Revenues and Other Operating Income**

	2012	2011	2010	2012 vs. 2011		2011 vs. 2010	
				\$ Change	% Change	\$ Change	% Change
(in thousands, except percentages)							
Revenues	\$ 250,727	\$ 172,256	\$ 131,829	\$ 78,471	46 %	\$ 40,427	31%
Verdict insurance proceeds	—	12,451	—	(12,451)	(100)%	12,451	100%
	<u>\$ 250,727</u>	<u>\$ 184,707</u>	<u>\$ 131,829</u>	<u>\$ 66,020</u>	<u>36 %</u>	<u>\$ 52,878</u>	<u>40%</u>

*Revenues.* In general, revenue arrangements provide for the payment of contractually determined fees in consideration for the grant of certain intellectual property rights for patented technologies owned or controlled by our operating subsidiaries. These rights typically include some combination of the following: (i) the grant of a non-exclusive, retroactive and future license to manufacture and/or sell products covered by patented technologies owned or controlled by our operating subsidiaries, (ii) covenants-not-to-sue, (iii) the release of the licensee from certain claims, and (iv) the dismissal of any pending litigation.

	2012	2011	2010
New revenue agreements executed	138	125	221
Licensing and enforcement programs with initial revenues	31	21	31
Average revenue per agreement (in thousands)	\$ 1,817	\$ 1,378	\$ 597

A summary of the main drivers of the change in revenues for the periods presented is as follows:

	2012 vs. 2011	2011 vs. 2010
	(in thousands)	
Increase (decrease) in number of agreements executed	\$ 23,619	\$ (132,293)
Increase in average revenue per agreement executed	54,852	172,720
Total	<u>\$ 78,471</u>	<u>\$ 40,427</u>

Four licensees individually accounted for 21%, 14%, 10%, and 10% respectively, of revenues recognized in fiscal year 2012, three licensees individually accounted for 26%, 17% and 15%, respectively, of revenues recognized in fiscal year 2011, and two licensees individually accounted for 35% and 19%, respectively, of revenues recognized in fiscal year 2010.

On a consolidated basis, as of December 31, 2012, 143 of our licensing programs had begun generating licensing revenues, up from 112 as of December 31, 2011 and 91 as of December 31, 2010.

*Other Operating Income - Verdict Insurance Proceeds.* Creative Internet Advertising Corporation, or CIAC, an operating subsidiary of Acacia Research Corporation, received a \$12.5 million final judgment stemming from its May 2009 trial verdict and corresponding damages award in its patent infringement lawsuit with Yahoo! Inc. Yahoo! Inc. appealed the verdict, and in April 2011, a three Judge panel of the United States Court of Appeals for the Federal Circuit reversed the District Court's judgment of infringement in a 2 to 1 decision. As a result of the reversal of the District Court's judgment, in September 2011, CIAC submitted a claim under a specific contingency insurance policy previously purchased and received \$12.5 million in verdict insurance proceeds.

**Cost of Revenues and Other Operating Income, and Net Income Attributable to Noncontrolling Interests**

				2012 vs 2011		2011 vs 2010	
	2012	2011	2010	\$ Change	% Change	\$ Change	% Change
(in thousands, except percentages)							
Inventor royalties**	\$ 26,028	\$ 46,614	\$ 25,292	\$ (20,586)	(44)%	\$ 21,322	84 %
Contingent legal fees**	24,651	44,247	19,906	(19,596)	(44)%	24,341	122 %
Other verdict insurance related costs	—	808	—	(808)	(100)%	808	100 %
Net income attributable to noncontrolling interests*	—	—	(3,191)	—	— %	3,191	(100)%

\* Refer to Note 2 to the notes to consolidated financial statements included in this report for additional information.

\*\*Includes inventor royalties and contingent legal fees (fiscal year 2011 only) associated with the verdict insurance policy and related proceeds received, as described below.

*Inventor Royalties, Net Income Attributable to Noncontrolling Interests and Contingent Legal Fees Expense.* Net income or loss attributable to noncontrolling interests represents the portion of net income or loss from the licensing and enforcement activities of our majority-owned operating subsidiaries that are distributable to the operating subsidiary's noncontrolling interest holders pursuant to the underlying operating agreements. The economic terms of patent acquisition agreements, operating agreements and contingent legal fee arrangements, associated with the patent portfolios owned or controlled by our operating subsidiaries, if any, including royalty obligations, if any, royalty rates, contingent fee rates and other terms and conditions, vary across the patent portfolios owned or controlled by our operating subsidiaries. In certain instances, we have acquired certain patent portfolios outright without future inventor royalty obligations. These costs fluctuate period to period, based on the amount of revenues recognized each period, the terms and conditions of revenue agreements executed each period and the mix of specific patent portfolios with varying economic terms, conditions and obligations generating revenues each period.

*Verdict Insurance Proceeds Related Costs.* Verdict insurance proceeds related costs include \$2.9 million of inventor royalties, \$4.0 million of contingent legal fees and \$808,000 in other costs associated with the verdict insurance policy and related proceeds received, as described above.

A summary of the main drivers of the change in inventor royalties expense (including noncontrolling interests as applicable) and contingent legal fees expense, in relation to the change in total revenues, for the periods presented, is as follows:

	2012 vs. 2011	% of Prior Period Balance	2011 vs. 2010	% of Prior Period Balance
(in thousands, except percentage change values)				
Decrease in inventor royalty rates	\$ (6,326)	(14)%	\$ (6,750)	(24)%
Increase in total revenues	18,016	39 %	16,520	58 %
(Increase) decrease in revenues without inventor royalty obligations	(32,276)	(69)%	8,361	29 %
Total change in inventor royalties expense (including noncontrolling interests as applicable)	\$ (20,586)	(44)%	\$ 18,131	63 %

	2012 vs. 2011	% of Prior Period Balance	2011 vs. 2010	% of Prior Period Balance
(in thousands, except percentage change values)				
(Decrease) increase in contingent legal fee rates	\$ (30,483)	(68)%	\$ 7,798	40%
Increase in total revenues	16,542	37 %	10,915	55%
(Increase) decrease in revenues without contingent legal fee obligations	(5,655)	(13)%	5,628	27%
Total change in contingent legal fees	<u>\$ (19,596)</u>	<u>(44)%</u>	<u>\$ 24,341</u>	<u>122%</u>

Certain revenue agreements with unrelated third parties entered into during the periods presented resulted in the grant of certain intellectual property rights and recognition of revenues, portions of which were not subject to inventor royalty and contingent legal fee arrangements, as well as the grant of licenses from certain of our operating subsidiaries and recognition of revenues that were subject to inventor royalties and contingent legal fee arrangements. Revenues recognized subject to inventor royalties and contingent legal fees are based on a determination by the respective operating subsidiaries.

	2012	2011	2010
(in thousands)			
Litigation and licensing expenses - patents	\$ 21,591	\$ 13,005	\$ 13,891
Amortization of patents	39,019	9,745	6,931

*Litigation and Licensing Expenses - Patents.* Litigation and licensing expenses-patents include patent-related prosecution and enforcement costs incurred by outside patent attorneys engaged on an hourly basis and the out-of-pocket expenses incurred by law firms engaged on a contingent fee basis. Litigation and licensing expenses-patents also includes licensing and enforcement related third-party patent research, development, consulting, and other costs incurred in connection with the licensing and enforcement of patent portfolios. Litigation and licensing expenses-patents fluctuate from period to period based on patent enforcement and prosecution activity associated with ongoing licensing and enforcement programs and the timing of the commencement of new licensing and enforcement programs in each period.

*Fiscal Year 2012 versus 2011.* Litigation and licensing expenses-patents increased due primarily to higher net levels of patent prosecution, litigation support, third-party technical consulting and professional expert expenses associated with ongoing licensing and enforcement programs and our investment in new licensing and enforcement programs commenced since the end of the prior year period.

*Fiscal Year 2011 versus 2010.* Litigation and licensing expenses-patents were relatively flat reflecting consistent net levels of related patent enforcement and prosecution activity associated with our continued investment in ongoing licensing and enforcement programs and new licensing and enforcement programs commenced since the end of the applicable prior year period.

We expect patent-related legal expenses to continue to fluctuate period to period based on the factors summarized above, in connection with upcoming scheduled trial dates and our current and future patent acquisition, development, licensing and enforcement activities.

#### *Amortization of Patents.*

*Fiscal Year 2012 versus 2011.* Amortization expense increased 300% due primarily to amortization expense related to new patent portfolios acquired since December 31, 2011, totaling \$19.9 million, comprised primarily of non-cash patent amortization expense related to the patents acquired in connection with our acquisition of ADAPTIX in the first quarter of 2012, totaling \$14.6 million. The increase also reflects a net increase in accelerated patent amortization related to recoupable up-front patent portfolio acquisition costs recovered from net licensing proceeds totaling \$7.5 million and a net increase in accelerated amortization related to the sale of patent portfolios totaling \$2.0 million.

*Fiscal Year 2011 versus 2010.* Amortization expense increased 41% primarily due to a net increase in accelerated patent amortization related to recoupable up-front patent portfolio acquisition costs recovered from net licensing proceeds totaling \$1.9 million, a net increase in accelerated amortization related to patent portfolios to which our operating subsidiary elected to terminate its rights and other patent portfolio sales to unrelated parties totaling \$547,000, a net increase in scheduled amortization on patent portfolios owned or controlled as of the end of the prior period totaling \$207,000, and an increase in

amortization on new patent portfolios acquired since the end of the prior year period totaling \$118,000.

### Operating Costs and Expenses

	2012	2011	2010
	(in thousands)		
Marketing, general and administrative expenses	\$ 28,426	\$ 22,114	\$ 17,946
Non-cash stock compensation expense included in marketing, general and administrative expense	25,657	13,579	7,121
Total marketing, general and administrative expenses	\$ 54,083	\$ 35,693	\$ 25,067
Research, consulting and other expenses - business development	4,943	4,338	2,121

*Marketing, General and Administrative Expenses.* Marketing, general and administrative expenses include employee compensation and related personnel costs, including non-cash stock compensation expenses, office and facilities costs, legal and accounting professional fees, public relations, marketing, stock administration, gross receipts based state taxes and other corporate costs. A summary of the main drivers of the change in marketing, general and administrative expenses, including the impact of non-cash stock compensation charges, for the periods presented, is as follows (in thousands):

	2012 vs. 2011	2011 vs. 2010
	(in thousands)	
Net increase in licensing, business development, engineering related personnel costs and other personnel costs	\$ 2,083	\$ 2,172
Increase in variable performance-based compensation costs	2,728	1,303
Corporate, general and administrative costs	1,222	796
Non-cash stock compensation expense	12,078	6,458
Other	279	(103)
Total change in marketing, general and administrative expenses	\$ 18,390	10,626

The change in non-cash stock compensation expense for the periods presented was due primarily to an increase in the average grant date fair value of restricted shares expensed and an increase in the number of restricted shares expensed period to period. Refer to Note 11 to the consolidated financial statements elsewhere herein.

*Research, Consulting and Other Expenses - Business Development.* Research, consulting and other expenses include third-party business development related research, development, consulting, and other costs incurred in connection with business development activities. These costs fluctuate period to period based on business development related activities in each period.

### Provision for Income Taxes

	2012	2011	2010
Provision for income taxes (in thousands)	\$ 22,060	\$ 8,708	\$ 1,740
Effective tax rate	27%	29%	4%

*Fiscal Year 2012 versus 2011.* Excluding the impact of discrete items primarily related to the release of valuation allowance in fiscal year 2012 as described below, our annual effective tax rates were 40% and 29% for fiscal year 2012 and 2011, respectively. The fluctuation in tax expense included the impact of the following:

- Noncash tax expense calculated without the excess tax benefit related to the exercise and vesting of equity-based incentive awards, totaling approximately \$13.2 million and \$583,000 for fiscal year 2012 and 2011, respectively, which were credited to additional paid-in capital, not taxes payable, and other state related taxes. For financial reporting purposes, tax expense is calculated without the excess tax benefit related to the exercise and vesting of equity-based incentive awards. Under U.S. generally accepted accounting principles, if a deduction reported on a tax return for an equity-based incentive award exceeds the cumulative compensation cost for those instruments recognized for financial reporting purposes, any resulting realized tax benefit that exceeds the previously calculated and recognized compensation expense for those instruments is considered an excess tax benefit, and is recognized as a credit to additional paid-in capital, not taxes payable, as the expense does not reflect cash taxes payable. The

deductions related to the exercise and vesting of equity-based incentive awards is available to offset taxable income on our consolidated tax returns.

- Foreign withholding taxes, totaling \$11.9 million and \$7.6 million for fiscal year 2012 and 2011, respectively, withheld by the applicable foreign tax authority on revenue agreements executed with third party licensees domiciled in certain foreign jurisdictions. In general, foreign taxes withheld may be claimed as a deduction on future U.S. corporate income tax returns, or as a credit against future U.S. income tax liabilities, subject to certain limitations. The tax provisions for the respective periods provide for the utilization of the foreign taxes withheld as a credit against income tax expense calculated for financial statement purposes.
- As of December 31, 2011, we maintained a full valuation allowance against our net deferred tax assets. The net deferred tax liability resulting from the acquisition of ADAPTIX created an additional source of income to utilize against the majority of our existing consolidated net deferred tax assets. In addition, we estimated that certain other deferred tax assets related to foreign tax credits and other state related deferrals were more likely than not realizable in future periods. Accordingly, the valuation allowance on the majority of our net deferred tax assets was released, resulting in a first quarter 2012 financial statement income tax benefit of approximately \$10.7 million .

*Fiscal Year 2011 versus 2010.* The increase in our effective tax rate in fiscal year 2011, as compared to 2010, primarily reflects the impact of foreign withholding taxes totaling \$7.6 million, which were withheld by the applicable foreign tax authority pursuant to the requirements of the applicable income tax convention, on payments in connection with certain licensing arrangements executed during fiscal year 2011. As of December 31, 2011, we continued to record a full valuation allowance against our net deferred tax assets. As a result, amounts related to foreign taxes withheld are reflected in tax expense for fiscal year 2011. The increase was partially offset by a decrease in noncash state tax expense calculated for financial reporting purposes without the excess tax benefit related to the exercise and vesting of equity-based incentive awards in fiscal year 2011.

In October 2010, the State of California passed a state budget including provisions furthering the suspension of the use of NOLs, for the 2010 and 2011 tax years. As a result, California State NOLs were not available to offset California taxable income for the 2010 or 2011 tax years.

## **Inflation**

Inflation has not had a significant impact on us or any of our subsidiaries in the current or prior periods.

## **Liquidity and Capital Resources**

### *General*

Our primary sources of liquidity are cash, cash equivalents and investments on hand generated from our operating activities and proceeds from recent equity financings. Refer to "*Cash Flows from Financing Activities*" below for information regarding recent equity financings. We retain broad discretion over the use of the net proceeds from recent equity offerings and intend to use the net proceeds for operations and for other general corporate purposes, including, but not limited to, working capital, strategic acquisitions and other transactions.

Our management believes that our cash and cash equivalents, investments, anticipated cash flow from operations and other external sources of available credit, will be sufficient to meet our cash requirements through at least March 2014 and for the foreseeable future. We may, however, encounter unforeseen difficulties that may deplete our capital resources more rapidly than anticipated, including those set forth under Item 1A, "Risk Factors", above. Any efforts to seek additional funding could be made through issuances of equity or debt, or other external financing. However, additional funding may not be available on favorable terms, if at all. The capital and credit markets have experienced extreme volatility and disruption since late 2007, and the volatility and impact of the disruption has continued into 2012. At times during this period, the volatility and disruption has reached unprecedented levels. In several cases, the markets have exerted downward pressure on stock prices and credit capacity for certain issuers, and there can be no assurance that the commercial paper markets will be a reliable source of short-term financing for us. If we fail to obtain additional funding when needed, we may not be able to execute our business plans and our business, conducted by our operating subsidiaries, may suffer.

### *Cash, Cash Equivalents and Investments*



Our consolidated cash, cash equivalents and investments on hand totaled \$311.3 million at December 31, 2012, compared to \$323.3 million at December 31, 2011. The net change in cash and cash equivalents on hand related to operations for 2012, 2011 and 2010 was comprised of the following (in thousands):

	<u>2012</u>	<u>2011</u>	<u>2010</u>
Net cash provided by (used in):			
Operating activities	\$ 104,603	\$ 60,590	\$ 44,922
Investing activities	(408,792)	(23,237)	(8,098)
Financing activities	211,260	174,865	13,956

*Cash Flows from Operating Activities.* Cash receipts from licensees totaled \$243.8 million, \$189.9 million and \$127.4 million in fiscal years 2012, 2011 and 2010, respectively. The fluctuations in cash receipts for the periods presented primarily reflects the corresponding fluctuations in revenues recognized during the same periods, as described above. Cash outflows from operations totaled \$145.7 million, \$129.3 million and \$82.5 million in fiscal years 2012, 2011 and 2010, respectively. The fluctuations in cash outflows for the periods presented reflect the net increase in revenue related inventor royalties and contingent legal fees and other operating costs and expenses during the same periods, as discussed above, and the impact of the timing of payments to inventors, attorneys and other vendors.

*Cash Flows from Investing Activities.* Cash flows from investing activities and related changes were comprised of the following for the periods presented (in thousands):

	<u>2012</u>	<u>2011</u>	<u>2010</u>
Purchase of ADAPTIX, Inc., net of cash acquired	\$ (150,000)	\$ —	\$ —
Patent acquisition costs	(178,260)	(14,680)	(8,224)
Net (purchases) sales of available-for-sale investments	(80,264)	(8,367)	184
Other	(268)	(190)	(58)
Net cash used in investing activities	<u>\$ (408,792)</u>	<u>\$ (23,237)</u>	<u>\$ (8,098)</u>

*Cash Flows from Financing Activities.* Cash flows from financing activities and related changes included the following for the periods presented (in thousands):

	<u>2012</u>	<u>2011</u>	<u>2010</u>
Proceeds from sale of common stock, net of issuance costs	\$ 218,961	\$ 175,229	\$ —
Repurchases of common stock	(26,732)	—	—
Distributions to noncontrolling interests - Acacia IP Fund	(312)	(2,897)	(4,807)
Contributions from noncontrolling interests - Acacia IP Fund	5,793	1,539	2,393
Proceeds from the exercise of stock options	340	411	15,068
Excess tax benefits from stock-based compensation	13,210	583	1,302
Net cash provided by financing activities	<u>\$ 211,260</u>	<u>\$ 174,865</u>	<u>\$ 13,956</u>

On November 16, 2012, we announced that our Board of Directors authorized a program for repurchases of shares of our outstanding common stock. Under the stock repurchase program, effective November 16, 2012, we are authorized to purchase in the aggregate up to \$100 million of our common stock through the period ending May 15, 2013. Repurchases may be made from time to time by us in the open market or in block purchases in compliance with applicable SEC rules. From the effective date through December 31, 2012, we acquired 1,129,408 shares of our common stock at an average price of \$23.65 per share. Repurchases to date were made using existing cash resources and occurred in the open market.

#### *Working Capital*

The primary components of working capital are cash and cash equivalents, accounts receivable, prepaid expenses, accounts payable, accrued expenses, and royalties and contingent legal fees payable. Working capital at December 31, 2012 was \$302.6 million, compared to \$294.9 million at December 31, 2011.

Consolidated accounts receivable from licensees increased to \$9.8 million at December 31, 2012, compared to \$2.9 million at December 31, 2011. Accounts receivable balances fluctuate based on the timing, magnitude and payment terms associated with revenue agreements executed during the period, and the timing of cash receipts on accounts receivable balances recorded in previous periods. Three licensees individually represented approximately 34%, 30% and 25%, respectively, of accounts receivable at December 31, 2012. Five licensees individually represented approximately 18%, 15%, 14%, 13% and 10%, respectively, of accounts receivable at December 31, 2011.

Consolidated royalties and contingent legal fees payable decreased to \$12.5 million at December 31, 2012, compared to \$23.5 million at December 31, 2011. Royalties and contingent legal fees payable balances fluctuate based on the magnitude and timing of the execution of related license agreements, the timing of cash receipts for the related license agreements, and the timing of payment of current and prior period royalties and contingent legal fees payable to inventor and outside attorneys, respectively.

The majority of accounts receivable from licensees at December 31, 2012 were collected or scheduled to be collected in the first quarter of 2013, in accordance with the terms of the related underlying license agreements. The majority of royalties and contingent legal fees payable are scheduled to be paid in the first quarter of 2013 in accordance with the underlying contractual arrangements.

Accounts payable and accrued expenses increased to \$9.5 million at December 31, 2012, from \$6.6 million at December 31, 2011, due primarily to the increase in accrued performance based compensation costs, an increase in litigation and licensing expenses—patents described above and the related timing of payments to vendors in the ordinary course.

### Off-Balance Sheet Arrangements

We have not entered into off-balance sheet financing arrangements, other than operating leases.

### Contractual Obligations

We have no significant commitments for capital expenditures in 2013. We have no committed lines of credit or other committed funding or long-term debt. The following table lists our material known future cash commitments as of December 31, 2012, and any material known commitments arising from events subsequent to year end:

	Payments Due by Period (In thousands)			
	Total	Less than 1 year	1-3 years	More than 3 years
Operating leases	\$ 5,223	\$ 1,078	\$ 2,268	\$ 1,877
Accrued distributions to noncontrolling interests in operating subsidiary	504	504	—	—
Scheduled patent acquisition related payments	500	250	250	—
Total contractual obligations	<u>\$ 6,227</u>	<u>\$ 1,832</u>	<u>\$ 2,518</u>	<u>\$ 1,877</u>

*Uncertain Tax Positions.* At December 31, 2012, the Company had total unrecognized tax benefits of approximately \$2,127,000, including a recorded noncurrent liability of \$85,000, related to unrecognized tax benefits primarily associated with state taxes. No interest and penalties have been recorded for the unrecognized tax benefits as of December 31, 2012. If recognized, approximately \$2,127,000 would impact the Company's effective tax rate. The Company does not expect that the liability for unrecognized tax benefits will change significantly within the next 12 months. Activity related to the gross unrecognized tax benefits for the year ended December 31, 2012 was as follows (in thousands):

Balance at January 1, 2012	\$ 85
Additions based on tax positions related to the current year	—
Additions for tax positions related to prior years	772
Additions resulting from the acquisition of ADAPTIX	1,270
Reductions	—
Balance at December 31, 2012	<u>\$ 2,127</u>

### Recent Accounting Pronouncements

Refer to Note 2 to our notes to consolidated financial statements included elsewhere herein.

## **ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

The primary objective of our investment activities is to preserve principal while concurrently maximizing the income we receive from our investments without significantly increasing risk. In addition, we sometimes invest in marketable equity securities for strategic purposes related to our patent monetization-based businesses. Some of the securities that we invest in may be subject to interest rate risk and/or market risk. This means that a change in prevailing interest rates, with respect to interest rate risk, or a change in the value of the United States equity markets, with respect to market risk, may cause the principal amount or market value of the investments to fluctuate. For example, if we hold a security that was issued with a fixed interest rate at the then-prevailing rate and the prevailing interest rate later rises, the current value of the principal amount of our investment may decline. To minimize these risks in the future, we intend to maintain our portfolio of cash equivalents and short-term investments in a variety of securities, including commercial paper, money market funds, high-grade corporate bonds, government and non-government debt securities and certificates of deposit. However, to the extent that our marketable equity securities have strategic value, we typically do not attempt to reduce or eliminate market risk with respect to such securities through hedging activities.

At December 31, 2012 and 2011, our short-term investments were comprised of AAA rated money market funds that invest in first-tier only securities, which primarily include domestic commercial paper, securities issued or guaranteed by the U.S. government or its agencies, U.S. bank obligations, and fully collateralized repurchase agreements (included in cash and cash equivalents in the accompanying consolidated balance sheets), direct investments in highly liquid, AAA, U.S. government securities, and strategic investments in marketable equity securities (included in short term investments in the accompanying consolidated balance sheet as of December 31, 2012). All outstanding auction rate securities as of December 31, 2011, were sold during the year ended December 31, 2012.

In general, money market funds are not subject to market risk because the interest paid on such funds fluctuates with the prevailing interest rate. Accordingly, a 100 basis point increase in interest rates or a 10% decline in the value of the United States equity markets would not be expected to have a material impact on the value of such money market funds. Investments in U.S. government fixed income securities are subject to interest rate risk and will decline in value if interest rates increase. However, due to the relatively short duration of our investment portfolio, an immediate 10% change in interest rates would have no material impact on our financial condition, results of operations or cash flows. Declines in interest rates over time will, however, reduce our interest income. Marketable equity securities are subject to increased market risk sensitivity, but are not directly impacted by interest rate risk. To determine reasonably possible decreases in the value of our marketable equity investments, we analyzed the expected market price sensitivity of our marketable equity investment portfolio. Assuming a loss of 10% in the value of the United States equity markets, the aggregate value of our marketable equity investments could decrease by approximately 14%.

## **ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

The financial statements and related financial information required to be filed hereunder are indexed under Item 15 of this report and are incorporated herein by reference.

## **ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

None.

## **ITEM 9A. CONTROLS AND PROCEDURES**

### **(a) Conclusion Regarding the Effectiveness of Disclosure Controls and Procedures**

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of our disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that, as of December 31, 2012, our disclosure controls and procedures were effective to ensure that the information required to be disclosed by us in the reports that we file or submit under the Exchange Act is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure, and that such information is recorded, processed, summarized and reported within the time

periods prescribed by the SEC.

**(b) Management's Report on Internal Control Over Financial Reporting**

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act. Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in Internal Control - Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on our evaluation under the framework in Internal Control - Integrated Framework, our management concluded that our internal control over financial reporting was effective as of December 31, 2012.

Grant Thornton LLP, the independent registered public accounting firm who audited our consolidated financial statements included in this Annual Report on Form 10-K, has issued a report on our internal control over financial reporting, which is included herein.

*Changes in Internal Controls.* There were no changes in our internal control over financial reporting during the fourth fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

**ITEM 9B. OTHER INFORMATION**

None

**PART III**

**ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE**

Except as provided below, in accordance with General Instruction G(3) to Form 10-K, certain information required by this Item is incorporated herein by reference to our definitive proxy statement to be filed with the SEC no later than April 30, 2013.

*Code of Conduct.*

We have adopted a Code of Conduct that applies to all employees, including our chief executive officer, chief financial and accounting officer, president and any persons performing similar functions. Our Code of Conduct is provided on our internet website at [www.acaciaresearch.com](http://www.acaciaresearch.com).

**ITEM 11. EXECUTIVE COMPENSATION**

In accordance with General Instruction G(3) to Form 10-K, the information required by this Item is incorporated herein by reference to our definitive proxy statement to be filed with the SEC no later than April 30, 2013.

**ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS**

In accordance with General Instruction G(3) to Form 10-K, certain information required by this Item is incorporated herein by reference to our definitive proxy statement to be filed with the SEC no later than April 30, 2013.

## Equity Compensation Plan Information

The following table provides information with respect to shares of our common stock issuable under our equity compensation plans as of December 31, 2012:

Plan Category	(a) Number of securities to be issued upon exercise of outstanding options	(b) Weighted-average exercise price of outstanding options	(c) Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
<b>Equity compensation plans approved by security holders</b>			
2002 Acacia Technologies Stock Incentive Plan <sup>(1)</sup>	313,000	\$ 5.87	—
2007 Acacia Technologies Stock Incentive Plan <sup>(2)</sup>	—	—	—
Subtotal	313,000	\$ 5.87	—
<b>Equity compensation plans not approved by security holders</b>			
Grants to New Employees Outside of the Plan <sup>(3)</sup>	—	—	—
<b>Total</b>	<b>313,000</b>	<b>5.87</b>	<b>—</b>

- (1) The share reserve under the 2002 Acacia Technologies Stock Incentive Plan, or 2002 Stock Plan, automatically increased on the first trading day in January each calendar year by an amount equal to three percent (3%) of the total number of shares of our common stock outstanding on the last trading day of December in the prior calendar year, but in no event would this annual increase exceed 500,000 shares and in no event would the total number of shares of common stock in the share reserve (as adjusted for all such annual increases) exceed twenty million shares. The 2002 Stock Plan expired in December 2012. Column (a) excludes 1,361,000 in nonvested restricted stock awards and restricted stock units outstanding at December 31, 2012. Refer to Note 11 to our notes to consolidated financial statements included elsewhere herein.
- (2) The initial share reserve under the 2007 Acacia Technologies Stock Incentive Plan, or the 2007 Plan, was 560,000 shares of our common stock. The share reserve under the 2007 Plan automatically increased on January 1, 2008 and 2009, by an amount equal to two percent (2%) of the total number of shares of our common stock outstanding on the last trading day of December in the prior calendar year. After January 1, 2009, no new additional shares will be added to the 2007 Plan without security holder approval (except for shares subject to outstanding awards that are forfeited or otherwise returned to the 2007 Plan). Column (a) excludes 32,000 in nonvested restricted stock awards and restricted stock units outstanding at December 31, 2012. Refer to Note 11 to our notes to consolidated financial statements included elsewhere herein.
- (3) Column (a) excludes 87,000 in nonvested restricted stock awards outstanding at December 31, 2012 that were granted to new employees outside of existing approved plans, pursuant to and in accordance with applicable SEC guidelines. Refer to Note 11 to our notes to consolidated financial statements included elsewhere herein.

## ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

In accordance with General Instruction G(3) to Form 10-K, the information required by this Item is incorporated herein by reference to our definitive proxy statement to be filed with the SEC no later than April 30, 2013.

## ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

In accordance with General Instruction G(3) to Form 10-K, the information required by this Item is incorporated herein by reference to our definitive proxy statement to be filed with the SEC no later than April 30, 2013.

## ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES

(a) The following documents are filed as part of this report.

(1) Financial Statements	Page
Acacia Research Corporation Consolidated Financial Statements	
<a href="#">Reports of Independent Registered Public Accounting Firm</a>	<a href="#">F- 1</a>
<a href="#">Consolidated Balance Sheets as of December 31, 2012 and 2011</a>	<a href="#">F- 3</a>
<a href="#">Consolidated Statements of Income for the Years Ended December 31, 2012, 2011 and 2010</a>	<a href="#">F- 4</a>
<a href="#">Consolidated Statements of Comprehensive Income for the Years Ended December 31, 2012, 2011 and 2010</a>	<a href="#">F- 5</a>
<a href="#">Consolidated Statements of Stockholders' Equity for the Years Ended December 31, 2012, 2011 and 2010</a>	<a href="#">F- 6</a>
<a href="#">Consolidated Statements of Cash Flows for the Years Ended December 31, 2012, 2011 and 2010</a>	<a href="#">F- 8</a>
<a href="#">Notes to Consolidated Financial Statements</a>	<a href="#">F- 9</a>

(2) Financial Statement Schedules

Financial statement schedules are omitted because they are not applicable or the required information is shown in the Financial Statements or the Notes thereto.

(3) Exhibits

Refer to Item 15(b) below.

(b) Exhibits. The following exhibits are either filed herewith or incorporated herein by reference:

<b>Exhibit Number</b>	<b>Description</b>
2.1	Agreement and Plan of Merger, dated November 22, 2011, by and among Acacia Research Group LLC, Apollo Patent Corp., Adaptix, Inc., and Baker Communications Fund II (QP), L.P., solely in its capacity as representative for the shareholders of Adaptix, Inc.(15)
3.1	Amended and Restated Certificate of Incorporation (1)
3.2	Amended and Restated Bylaws
10.1*	Acacia Research Corporation 1996 Stock Option Plan, as amended (2)
10.2*	Form of Option Agreement constituting the Acacia Research Corporation 1996 Executive Stock Bonus Plan (3)
10.3*	2002 Acacia Technologies Stock Incentive Plan (4)
10.4*	2007 Acacia Technologies Stock Incentive Plan (5)
10.5*	Form of Acacia Technologies Stock Option Agreement for the 2007 Acacia Technologies Stock Incentive Plan (6)
10.6*	Form of Acacia Technologies Stock Issuance Agreement for the 2002 Acacia Technologies Stock Incentive Plan (6)
10.7*	Form of Acacia Technologies Stock Issuance Agreement for the 2007 Acacia Technologies Stock Incentive Plan (6)
10.8	Office Space Lease dated January 28, 2002, between Acacia Research Corporation and The Irvine Company (7)
10.9	Form of Indemnification Agreement (8)
10.10	Third Amendment to Lease dated January 28, 2002 between Acacia Research Corporation and the Irvine Company (9)

10.11*	Employment Agreement, dated January 28, 2005, by and between Acacia Technologies Services Corporation, and Dooyong Lee, as amended (10)
10.11.1*	Amendment to Employment Agreement, dated December 17, 2008, by and between Acacia Technologies, LLC and Dooyong Lee (13)
10.12*	Employment Agreement, dated April 12, 2004, by and between Acacia Media Technologies Corporation and Edward Treska (10)
10.12.1*	Addendum, dated March 31, 2008, to Employment Agreement by and between Acacia Media Technologies Corporation and Edward Treska (11)
10.13	Fourth Amendment to Lease dated January 28, 2002 between Acacia Research Corporation and the Irvine Company (10)
10.14	Fifth Amendment to Lease dated January 28, 2002 between Acacia Research Corporation and the Irvine Company (10)
10.15*	Employment Agreement, dated March 31, 2008, by and between Acacia Technologies, LLC and Paul Ryan (12)
10.15.1*	Amendment to Employment Agreement, dated December 17, 2008, by and between Acacia Technologies, LLC and Paul Ryan (12)
10.16*	Employment Agreement, dated March 31, 2008, by and between Acacia Technologies, LLC and Robert L. Harris (11)
10.16.1*	Amendment to Employment Agreement, dated December 17, 2008, by and between Acacia Technologies, LLC and Robert L. Harris (12)
10.17*	Amended Employment Agreement, dated March 31, 2008, by and between Acacia Technologies, LLC and Clayton J. Haynes (11)
10.17.1*	Amendment to Amended Employment Agreement, dated December 17, 2008, by and between Acacia Technologies, LLC and Clayton J. Haynes (12)
10.18*	Acacia Research Corporation Amended and Restated Executive Severance Policy (12)
10.19	Sixth Amendment to Lease dated January 28, 2002 between Acacia Research Corporation and the Irvine Company (14)
10.20	Form of Purchase Agreement (16)
18.1	Preferability Letter dated February 25, 2010 from Grant Thornton LLP, independent registered public accounting firm, regarding change in accounting principle (13)
21.1	List of Subsidiaries
23.1	Consent of Independent Registered Public Accounting Firm
24.1	Power of Attorney (included in the signature page hereto).
31.1	Certification of Chief Executive Officer Pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934
31.2	Certification of Chief Financial Officer Pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934
32.1	Certification of Chief Executive Officer Pursuant to Rule 13a-14(b)/15d-14(b) of the Securities Exchange Act of 1934 and 18 U.S.C. Section 1350
32.2	Certification of Chief Financial Officer Pursuant to Rule 13a-14(b)/15d-14(b) of the Securities Exchange Act of 1934 and 18 U.S.C. Section 1350
101	Interactive Data Files Pursuant to Rule 405 of Regulation S-T.

\* The referenced exhibit is a management contract, compensatory plan or arrangement required to be filed as an exhibit to this Annual Report on Form 10-K pursuant to Item 15(c) of Form 10-K.

- (1) Incorporated by reference to Acacia Research Corporation's Current Report on Form 8-K filed on June 5, 2008 (File No. 000-26068).
- (2) Incorporated by reference to Appendix A to Acacia Research Corporation's Definitive Proxy Statement on Schedule 14A filed on April 20, 2000 (File No. 000-26068).
- (3) Incorporated by reference to Appendix A to Acacia Research Corporation's Definitive Proxy Statement on Schedule 14A filed on April 26, 1996 (File No. 000-26068).



- (4) Incorporated by reference to Annex E to the Proxy Statement/Prospectus which formed part of Acacia Research Corporation's Registration Statement on Form S-4 (File No. 333-87654) which became effective on November 8, 2002.
- (5) Incorporated by reference to Acacia Research Corporation's Registration Statement on Form S-8 (File No. 333-144754) which became effective on July 20, 2007.
- (6) Incorporated by reference to Acacia Research Corporation's Quarterly Report on Form 10-Q for the period ended September 30, 2007, filed on November 2, 2007 (File No. 000-26068).
- (7) Incorporated by reference to Acacia Research Corporation's Annual Report on Form 10-K for the year ended December 31, 2001, filed on March 27, 2002 (File No. 000-26068).
- (8) Incorporated by reference to Acacia Research Corporation's Quarterly Report on Form 10-Q for the period ended June 30, 2012, filed on July 30, 2012 (File No. 000-26068).
- (9) Incorporated by reference to Acacia Research Corporation's Quarterly Report on Form 10-Q for the period ended March 31, 2006, filed on May 10, 2006 (File No. 000-26068).
- (10) Incorporated by reference to Acacia Research Corporation's Annual Report on Form 10-K for the year ended December 31, 2007, filed on March 14, 2008 (File No. 000-26068).
- (11) Incorporated by reference to Acacia Research Corporation's Current Report on Form 8-K filed on April 2, 2008 (File No. 000-26068).
- (12) Incorporated by reference to Acacia Research Corporation's Annual Report on Form 10-K for the year ended December 31, 2008, filed on February 26, 2009 (File No. 000-26068).
- (13) Incorporated by reference to Acacia Research Corporation's Annual Report on Form 10-K for the year ended December 31, 2009, filed on February 26, 2010, as amended on March 1, 2010 (File No. 000-26068)
- (14) Incorporated by reference to Acacia Research Corporation's Annual Report on Form 10-K for the year ended December 31, 2010, filed on February 28, 2011, as amended on March 24, 2011 (File No. 000-26068).
- (15) Incorporated by reference to Acacia Research Corporation's Current Report on Form 8-K/A filed on January 19, 2012 (File No. 000-26068). Portions of this exhibit have been omitted pursuant to a request for confidential treatment under Rule 24-b-2 of the Securities Exchange Act of 1934, as amended. The omitted material has been separately filed with the Securities and Exchange Commission.
- (16) Incorporated by reference to Acacia Research Corporation's Current Report on Form 8-K filed on February 16, 2012 (File No. 000-26068).



## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Board of Directors and Stockholders  
Acacia Research Corporation

We have audited the accompanying consolidated balance sheets of Acacia Research Corporation (a Delaware corporation) (the "Company") as of December 31, 2012 and 2011, and the related consolidated statements of income, comprehensive income, stockholders' equity, and cash flows for each of the three years in the period ended December 31, 2012. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Acacia Research Corporation as of December 31, 2012 and 2011, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2012 in conformity with accounting principles generally accepted in the United States of America.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the Company's internal control over financial reporting as of December 31, 2012, based on criteria established in *Internal Control-Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated February 28, 2013 expressed an unqualified opinion on the effectiveness of the Company's internal control over financial reporting.

/s/ GRANT THORNTON LLP

Los Angeles, California  
February 28, 2013

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Board of Directors and Stockholders  
Acacia Research Corporation

We have audited the internal control over financial reporting of Acacia Research Corporation's (a Delaware Corporation) (the "Company") as of December 31, 2012, based on criteria established in *Internal Control-Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Report on Internal Control Over Financial Reporting. Our responsibility is to express an opinion on Acacia Research Corporation's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2012, based on criteria established in *Internal Control-Integrated Framework* issued by COSO.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated financial statements of the Company as of and for the year ended December 31, 2012, and our reported dated February 28, 2013 expressed an unqualified opinion on those financial statements.

/s/ GRANT THORNTON LLP

Los Angeles, California  
February 28, 2013

**ACACIA RESEARCH CORPORATION**  
**CONSOLIDATED BALANCE SHEETS**  
As of December 31, 2012 and 2011  
(In thousands, except share and per share information)

	December 31, 2012	December 31, 2011
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 221,804	\$ 314,733
Short-term investments	89,475	6,597
Accounts receivable	9,843	2,915
Prepaid expenses and other current assets	3,441	803
Total current assets	324,563	325,048
Property and equipment, net of accumulated depreciation and amortization	339	220
Patents, net of accumulated amortization	313,529	25,188
Goodwill	30,149	—
Investments - noncurrent	—	1,956
Other assets	137	465
	<u>\$ 668,717</u>	<u>\$ 352,877</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable and accrued expenses / costs	\$ 9,485	\$ 6,625
Royalties and contingent legal fees payable	12,508	23,508
Total current liabilities	21,993	30,133
Deferred income taxes	27,831	—
Other liabilities	415	632
Total liabilities	50,239	30,765
Commitments and contingencies (Note 12)		
Stockholders' equity:		
Preferred stock, par value \$0.001 per share; 10,000,000 shares authorized; no shares issued or outstanding	—	—
Common stock, par value \$0.001 per share; 100,000,000 shares authorized; 49,160,844 shares issued and outstanding as of December 31, 2012 and 42,928,001 shares issued and outstanding as of December 31, 2011	49	43
Treasury stock, at cost, 1,129,408 and 0 shares as of December 31, 2012 and December 31, 2011, respectively	(26,731)	—
Additional paid-in capital	644,982	386,821
Accumulated comprehensive loss	(1,166)	(1,830)
Accumulated deficit	(5,632)	(65,085)
Total Acacia Research Corporation stockholders' equity	611,502	319,949
Noncontrolling interests in operating subsidiaries	6,976	2,163
Total stockholders' equity	618,478	322,112
	<u>\$ 668,717</u>	<u>\$ 352,877</u>

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

**ACACIA RESEARCH CORPORATION**  
**CONSOLIDATED STATEMENTS OF INCOME**  
For the Years Ended December 31, 2012, 2011 and 2010  
(In thousands, except share and per share information)

	2012	2011	2010
Revenues	\$ 250,727	\$ 172,256	\$ 131,829
Operating costs and expenses:			
Cost of revenues:			
Inventor royalties	26,028	43,727	25,292
Contingent legal fees	24,651	40,281	19,906
Litigation and licensing expenses - patents	21,591	13,005	13,891
Amortization of patents	39,019	9,745	6,931
Verdict insurance proceeds	—	(12,451)	—
Verdict insurance proceeds related costs	—	7,661	—
Marketing, general and administrative expenses (including non-cash stock compensation expense of \$25,657 in 2012, \$13,579 in 2011, and \$7,121 in 2010)	54,083	35,693	25,067
Research, consulting and other expenses - business development	4,943	4,338	2,121
Total operating costs and expenses	170,315	141,999	93,208
Operating income	80,412	30,257	38,621
Other income (expense):			
Other income	500	—	—
Interest income	825	81	103
Write off of investment	(45)	—	—
Gain (loss) on investment	(343)	15	32
Total other income (expense)	937	96	135
Income from operations before provision for income taxes	81,349	30,353	38,756
Provision for income taxes	(22,060)	(8,708)	(1,740)
Net income including noncontrolling interests in operating subsidiaries	59,289	21,645	37,016
Net loss (income) attributable to noncontrolling interests in operating subsidiaries	164	(539)	(2,965)
Net income attributable to Acacia Research Corporation	\$ 59,453	\$ 21,106	\$ 34,051
Net income per common share attributable to Acacia Research Corporation:			
Basic income per share	\$ 1.26	\$ 0.53	\$ 1.05
Diluted income per share	\$ 1.24	\$ 0.51	\$ 0.97
Weighted-average shares:			
Weighted-average number of shares outstanding, basic	47,251,061	39,743,433	32,306,322
Weighted-average number of shares outstanding, diluted	48,060,647	41,258,297	35,081,611

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

**ACACIA RESEARCH CORPORATION**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME**  
**For the Years Ended December 31, 2012, 2011 and 2010**  
(In thousands)

	<u>2012</u>	<u>2011</u>	<u>2010</u>
Net income attributable to Acacia Research Corporation	\$ 59,453	\$ 21,106	\$ 34,051
Other comprehensive income (loss):			
Unrealized loss on short-term investments, net of tax of \$0	657	(1,830)	—
Unrealized gain on foreign currency translation, net of tax of \$0	7	—	—
Add: reclassification adjustment for losses included in net income	277	—	—
Comprehensive income	<u>\$ 60,394</u>	<u>\$ 19,276</u>	<u>\$ 34,051</u>

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

**ACACIA RESEARCH CORPORATION**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
For the Years Ended December 31, 2012, 2011 and 2010  
(In thousands, except share information)

	Common Shares	Common Stock	Treasury Stock	Additional Paid-in Capital	Other Comprehensive (Loss) Income	Accumulated Deficit	Noncontrolling Interests in Operating Subsidiaries	Total
Balance at December 31, 2009	31,912,066	\$ 32	\$ —	\$ 173,672	\$ —	\$ (120,242)	\$ 2,507	\$55,969
<b>2010</b>								
Net income attributable to Acacia Research Corporation	—	—	—	—	—	34,051	—	34,051
Stock options exercised	2,852,002	3	—	15,065	—	—	—	15,068
Compensation expense relating to stock options and restricted stock awards	1,265,000	1	—	7,120	—	—	—	7,121
Excess tax benefits from stock-based compensation	—	—	—	1,302	—	—	—	1,302
Net income attributable to noncontrolling interests in operating subsidiary	—	—	—	—	—	—	2,965	2,965
Contributions from noncontrolling interests in operating subsidiary, net	—	—	—	—	—	—	2,317	2,317
Distributions to noncontrolling interests in operating subsidiary	—	—	—	—	—	—	(4,807)	(4,807)
Issuance costs	—	—	—	(133)	—	—	—	(133)
Balance at December 31, 2010	36,029,068	36	—	197,026	—	(86,191)	2,982	113,853
<b>2011</b>								
Net income attributable to Acacia Research Corporation	—	—	—	—	—	21,106	—	21,106
Sale of common stock, net of issuance costs of \$5,896	5,750,000	6	—	175,223	—	—	—	175,229
Stock options exercised	87,068	—	—	411	—	—	—	411
Compensation expense relating to stock options and restricted stock awards	1,061,865	1	—	13,578	—	—	—	13,579
Excess tax benefits from stock-based compensation	—	—	—	583	—	—	—	583
Net income attributable to noncontrolling interests in operating subsidiaries	—	—	—	—	—	—	539	539
Contributions from noncontrolling interests in operating subsidiary, net	—	—	—	—	—	—	1,539	1,539
Distributions to noncontrolling interests in operating subsidiary	—	—	—	—	—	—	(2,897)	(2,897)
Unrealized loss on short-term investments	—	—	—	—	(1,830)	—	—	(1,830)
Balance at December 31, 2011	42,928,001	43	—	386,821	(1,830)	(65,085)	2,163	322,112
<b>2012</b>								
Net income attributable to Acacia Research Corporation	—	—	—	—	—	59,453	—	59,453
Sale of common stock, net of issuance costs of \$6,039	6,122,449	6	—	218,955	—	—	—	218,961
Repurchase of common stock	(1,129,408)	(1)	(26,731)	—	—	—	—	(26,732)
Stock options exercised	71,272	—	—	340	—	—	—	340



Compensation expense relating to stock options and restricted stock awards	1,168,530	1	—	25,656	—	—	—	25,657
Excess tax benefits from stock-based compensation	—	—	—	13,210	—	—	—	13,210
Net loss attributable to noncontrolling interests in operating subsidiaries	—	—	—	—	—	—	(164)	(164)
Contributions from noncontrolling interests in operating subsidiary, net	—	—	—	—	—	—	5,793	5,793
Distributions to noncontrolling interests in operating subsidiary	—	—	—	—	—	—	(816)	(816)
Unrealized gain on foreign currency translation	—	—	—	—	7	—	—	7
Unrealized gain on short-term investments	—	—	—	—	657	—	—	657
Balance at December 31, 2012	<u>49,160,844</u>	<u>\$ 49</u>	<u>\$(26,731)</u>	<u>\$ 644,982</u>	<u>\$ (1,166)</u>	<u>\$ (5,632)</u>	<u>\$ 6,976</u>	<u>\$618,478</u>

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

**ACACIA RESEARCH CORPORATION**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**For the Years Ended December 31, 2012, 2011 and 2010**  
(In thousands)

	<u>2012</u>	<u>2011</u>	<u>2010</u>
<b>Cash flows from operating activities:</b>			
Net income including noncontrolling interests in operating subsidiaries	\$ 59,289	\$ 21,645	\$ 37,016
Adjustments to reconcile net income including noncontrolling interests in operating subsidiaries to net cash provided by operating activities:			
Depreciation and amortization	39,168	9,850	7,017
Non-cash stock compensation	25,657	13,579	7,121
Release of valuation allowance on net deferred tax assets	(10,651)	—	—
Other	777	(15)	(32)
<b>Changes in assets and liabilities:</b>			
Accounts receivable	(6,928)	5,072	(2,877)
Prepaid expenses and other assets	(1,294)	1,075	(757)
Accounts payable and accrued expenses / costs	3,039	(1,364)	(1,414)
Royalties and contingent legal fees payable	(11,000)	10,748	358
Deferred revenues	—	—	(1,510)
Deferred income tax	6,546	—	—
Net cash provided by operating activities	<u>104,603</u>	<u>60,590</u>	<u>44,922</u>
<b>Cash flows from investing activities:</b>			
Purchases of property and equipment	(268)	(190)	(58)
Purchases of available-for-sale investments	(402,500)	(8,427)	—
Sales of available-for-sale investments	322,236	60	184
Purchase of ADAPTIX, Inc., net of cash acquired	(150,000)	—	—
Patent acquisition costs	(178,260)	(14,680)	(8,224)
Net cash used in investing activities	<u>(408,792)</u>	<u>(23,237)</u>	<u>(8,098)</u>
<b>Cash flows from financing activities:</b>			
Proceeds from sale of common stock, net of issuance costs	218,961	175,229	—
Repurchases of common stock	(26,732)	—	—
Distributions to noncontrolling interests in operating subsidiary	(312)	(2,897)	(4,807)
Contributions from noncontrolling interests in operating subsidiary, net of issuance costs	5,793	1,539	2,393
Proceeds from the exercise of stock options	340	411	15,068
Excess tax benefits from stock-based compensation	13,210	583	1,302
Net cash provided by financing activities	<u>211,260</u>	<u>174,865</u>	<u>13,956</u>
Increase (decrease) in cash and cash equivalents	(92,929)	212,218	50,780
Cash and cash equivalents, beginning	<u>314,733</u>	<u>102,515</u>	<u>51,735</u>
Cash and cash equivalents, ending	<u>\$ 221,804</u>	<u>\$ 314,733</u>	<u>\$ 102,515</u>

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

**1. DESCRIPTION OF BUSINESS**

*Description of Business.* As used herein, “Acacia” and the “Company” refer to Acacia Research Corporation and/or its wholly and majority-owned and controlled operating subsidiaries. All intellectual property acquisition, development, licensing and enforcement activities are conducted solely by certain of Acacia’s wholly and majority-owned and controlled operating subsidiaries.

Acacia’s operating subsidiaries acquire, develop, license and otherwise enforce patented technologies. Acacia’s operating subsidiaries generate revenues and related cash flows from the granting of intellectual property rights for the use of, or pertaining to, patented technologies that such operating subsidiaries own or control. Acacia’s operating subsidiaries assist patent owners with the prosecution and development of their patent portfolios, the protection of their patented technologies from unauthorized use, the generation of revenue from users of their patented technologies and, if necessary, the enforcement against unauthorized users of their patented technologies. Currently, on a consolidated basis, Acacia’s operating subsidiaries own or control the rights to over 250 patent portfolios, which include U.S. patents and certain foreign counterparts, covering technologies used in a wide variety of industries.

In January 2012, a wholly owned operating subsidiary of Acacia acquired ADAPTIX, Inc. (“ADAPTIX”), a pioneer in the development of 4G technologies for wireless systems, for cash consideration of \$160 million, as described at Note 8 to these consolidated financial statements.

Acacia was incorporated on January 25, 1993 under the laws of the State of California. In December 1999, it changed its state of incorporation from California to Delaware.

**2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

*Accounting Principles and Fiscal Year End.* The consolidated financial statements and accompanying notes are prepared on the accrual basis of accounting in accordance with generally accepted accounting principles in the United States of America. Acacia has a December 31 fiscal year end.

*Principles of Consolidation.* The accompanying consolidated financial statements include the accounts of Acacia and its wholly and majority-owned and controlled subsidiaries. Material intercompany transactions and balances have been eliminated in consolidation.

Noncontrolling interests in Acacia’s majority-owned and controlled operating subsidiaries (“noncontrolling interests”) are separately presented as a component of stockholders’ equity in the consolidated statements of stockholders’ equity for the applicable periods presented. Consolidated net income or (loss) is adjusted to include the net (income) or loss attributed to noncontrolling interests in the consolidated statements of income (loss) for the applicable periods presented. Refer to the accompanying consolidated statements of stockholders’ equity for total noncontrolling interests for the applicable periods presented. For the periods presented, net (income) loss attributable to noncontrolling interests in operating subsidiaries was comprised of the following (in thousands):

	<b>2012</b>	<b>2011</b>	<b>2010</b>
Net income attributable to noncontrolling interests <sup>(1)</sup>	\$ —	\$ —	\$ (3,191)
Net loss (income) attributable to noncontrolling interests - Acacia IP Fund	164	(539)	226
<b>Total net loss (income) attributable to noncontrolling interests</b>	<b>\$ 164</b>	<b>\$ (539)</b>	<b>\$ (2,965)</b>

<sup>(1)</sup> Net income attributable to noncontrolling interests in operating subsidiary represents net inventor royalties distributable to noncontrolling interests in one of Acacia’s majority-owned operating subsidiaries.

In August 2010, a wholly owned subsidiary of Acacia became the general partner of the Acacia Intellectual Property Fund, L.P. (the “Acacia IP Fund”), which was formed in August 2010. The Acacia IP Fund is included in the Company’s consolidated financial statements for the periods presented, as Acacia’s wholly owned subsidiary, as the general partner, has the ability to control the operations and activities of the Acacia IP Fund. Refer to Note 12 to these consolidated financial statements.

**ACACIA RESEARCH CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

*Revenue Recognition.* Revenue is recognized when (i) persuasive evidence of an arrangement exists, (ii) all obligations have been substantially performed pursuant to the terms of the arrangement, (iii) amounts are fixed or determinable, and (iv) the collectibility of amounts is reasonably assured.

In general, revenue arrangements provide for the payment of contractually determined fees in consideration for the grant of certain intellectual property rights for patented technologies owned or controlled by Acacia's operating subsidiaries. These rights typically include some combination of the following: (i) the grant of a non-exclusive, retroactive and future license to manufacture and/or sell products covered by patented technologies owned or controlled by Acacia's operating subsidiaries, (ii) a covenant-not-to-sue, (iii) the release of the licensee from certain claims, and (iv) the dismissal of any pending litigation. The intellectual property rights granted may be perpetual in nature, extending until the expiration of the related patents, or can be granted for a defined, relatively short period of time, with the licensee possessing the right to renew the agreement at the end of each contractual term for an additional minimum upfront payment. Pursuant to the terms of these agreements, Acacia's operating subsidiaries have no further obligation with respect to the grant of the non-exclusive retroactive and future licenses, covenants-not-to-sue, releases, and other deliverables, including no express or implied obligation on Acacia's operating subsidiaries' part to maintain or upgrade the technology, or provide future support or services. Generally, the agreements provide for the grant of the licenses, covenants-not-to-sue, releases, and other significant deliverables upon execution of the agreement, or upon receipt of the minimum upfront payment for term agreement renewals. As such, the earnings process is complete and revenue is recognized upon the execution of the agreement, when collectibility is reasonably assured, or upon receipt of the minimum upfront fee for term agreement renewals, and when all other revenue recognition criteria have been met.

Certain of the Company's revenue arrangements provide for future royalties or additional required payments based on future licensee activities. Additional royalties are recognized in revenue upon resolution of the related contingency provided that all revenue recognition criteria, as described above, have been met. Amounts of additional royalties due under these license agreements, if any, cannot be reasonably estimated by management.

Certain of the Company's revenue arrangements provide for the calculation of fees based on a licensee's actual quarterly sales or actual per unit activity, applied to a contractual royalty rate. Licensees that pay fees on a quarterly basis generally report actual quarterly sales or actual per unit activity information and related quarterly fees due within 30 days to 45 days after the end of the quarter in which such sales or activity takes place. The amount of fees due under these revenue arrangements each quarter cannot be reasonably estimated by management. Consequently, Acacia's operating subsidiaries recognize revenue from these revenue arrangements on a three-month lag basis, in the quarter following the quarter of sales or per unit activity, provided amounts are fixed or determinable and collectibility is reasonably assured. The lag method described above allows for the receipt of licensee royalty reports prior to the recognition of revenue.

Amounts related to revenue arrangements that do not meet the revenue recognition criteria described above are deferred until the revenue recognition criteria are met.

Acacia assesses the collectibility of fees receivable based on a number of factors, including past transaction history and credit-worthiness of licensees. If it is determined that collection is not reasonably assured, the fee is recognized when collectibility becomes reasonably assured, assuming all other revenue recognition criteria have been met, which is generally upon receipt of cash.

*Cost of Revenues.* Cost of revenues include the costs and expenses incurred in connection with Acacia's patent licensing and enforcement activities, including inventor royalties paid to original patent owners, contingent legal fees paid to external patent counsel, other patent-related legal expenses paid to external patent counsel, licensing and enforcement related research, consulting and other expenses paid to third parties and the amortization of patent-related acquisition costs. These costs are included under the caption "Cost of revenues" in the accompanying consolidated statements of income.

*Inventor Royalties and Contingent Legal Expenses.* Inventor royalties are expensed in the consolidated statements of income in the period that the related revenues are recognized. In certain instances, pursuant to the terms of the underlying inventor agreements, costs paid by Acacia's operating subsidiaries to acquire patents are recoverable from future net revenues. Patent acquisition costs that are recoverable from future net revenues are amortized over the estimated economic useful life of the related patents, or as the prepaid royalties are earned by the inventor, as appropriate, and the related expense is included in amortization expense in the consolidated statements of income. Any unamortized patent acquisition costs recovered from net revenues are expensed in the period recovered, and included in amortization expense in the consolidated statements of income.

**ACACIA RESEARCH CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

Contingent legal fees are expensed in the consolidated statements of income in the period that the related revenues are recognized. In instances where there are no recoveries from potential infringers, no contingent legal fees are paid; however, Acacia's operating subsidiaries may be liable for certain out of pocket legal costs incurred pursuant to the underlying legal services agreement. Legal fees advanced by contingent law firms that are required to be paid in the event that no license recoveries are obtained are expensed as incurred and included in liabilities in the consolidated balance sheets.

*Fair Value Measurements.* U.S. generally accepted accounting principles define fair value as the price that would be received for an asset or the exit price that would be paid to transfer a liability in the principal or most advantageous market in an orderly transaction between market participants on the measurement date, and also establishes a fair value hierarchy which requires an entity to maximize the use of observable inputs, where available. The three-level hierarchy of valuation techniques established to measure fair value, is defined as follows:

- Level 1 - Observable Inputs: Quoted prices in active markets for identical investments;
- Level 2 - Pricing Models with Significant Observable Inputs: Other significant observable inputs, including quoted prices for similar investments, interest rates, credit risk, etc.; and
- Level 3 - Unobservable Inputs: Significant unobservable inputs, including the entity's own assumptions in determining the fair value of investments.

Whenever possible, the Company is required to use observable market inputs (Level 1 - quoted market prices) when measuring fair value.

*Cash and Cash Equivalents.* Acacia considers all highly liquid, short-term investments with original maturities of three months or less when purchased to be cash equivalents. For the periods presented, Acacia's cash equivalents are comprised of investments in AAA rated money market funds that invest in first-tier only securities, which primarily includes: domestic commercial paper, securities issued or guaranteed by the U.S. government or its agencies, U.S. bank obligations, and fully collateralized repurchase agreements. Acacia's cash equivalents are measured at fair value using quoted prices that represent Level 1 inputs.

*Investments in Marketable Securities.* Investments in securities with original maturities of greater than three months and less than one year and other investments representing amounts that are available for current operations are classified as short-term investments, unless there are indications that such investments may not be readily sold in the short term. The fair values of these investments approximate their carrying values. At December 31, 2012 and 2011, all of Acacia's investments were classified as available-for-sale, which are reported at fair value on a recurring basis using significant observable inputs (Level 1) whenever possible, with related unrealized gains and losses in the value of such securities recorded as a separate component of other comprehensive income (loss) in stockholders' equity until realized. Realized and unrealized gains and losses are recorded based on the specific identification method. Interest on all securities is included in interest income. Refer to Note 7 to these notes to consolidated financial statements for information on the fair value and classification of auction rate securities held as of December 31, 2011.

*Impairment of Marketable Securities.* Acacia evaluates its investments in marketable securities for potential impairment, employing a systematic methodology on a quarterly basis that considers available quantitative and qualitative evidence. If the cost or carrying value of an investment exceeds its estimated fair value, the Company evaluates, among other factors, general market conditions, credit quality of instrument issuers, the duration and extent to which the fair value is less than cost, and the Company's intent and ability to hold, or plans or ability to sell. Fair value is estimated based on publicly available market information or other estimates determined by management. Investments are considered to be impaired when a decline in fair value is estimated to be other-than-temporary. Acacia reviews impairments associated with its investments in marketable securities and determines the classification of any impairment as temporary or other-than-temporary. An impairment is deemed other-than-temporary unless (a) Acacia has the ability and intent to hold an investment for a period of time sufficient for recovery of its carrying amount and (b) positive evidence indicating that the investment's carrying amount is recoverable within a reasonable period of time outweighs any evidence to the contrary. All available evidence, both positive and negative, is considered to determine whether, based on the weight of such evidence, the carrying amount of the investment is recoverable within a reasonable period of time. For investments classified as available-for-sale, unrealized losses that are other-than-temporary are recognized in the consolidated statements of income.

*Concentration of Credit Risks.* Financial instruments that potentially subject Acacia to concentrations of credit risk are cash equivalents, investments and accounts receivable. Acacia places its cash equivalents and investments primarily in highly rated money market funds and investment grade marketable securities. Cash equivalents are also invested in deposits with certain financial institutions and may, at times, exceed federally insured limits. Acacia has not experienced any significant

**ACACIA RESEARCH CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

losses on its deposits of cash and cash equivalents.

Four licensees individually accounted for 21%, 14%, 10% and 10%, respectively, of revenues recognized during the year ended December 31, 2012. Three licensees individually accounted for 26%, 17% and 15%, respectively, of revenues recognized during the year ended December 31, 2011. Two licensees individually accounted for 35% and 19%, respectively, of revenues recognized during the year ended December 31, 2010. Three licensees individually represented approximately 34%, 30% and 25%, respectively, of accounts receivable at December 31, 2012. Five licensees individually represented approximately 18%, 15%, 14%, 13% and 10% of accounts receivable at December 31, 2011. For 2012, 2011 and 2010, 43%, 49% and 6%, respectively, of revenues were attributable to licensees domiciled in foreign jurisdictions, based on the jurisdiction of the entity obligated to satisfy payment obligations pursuant to the applicable revenue arrangement. The Company does not have any material foreign operations.

Acacia performs credit evaluations of its licensees with significant receivable balances, if any, and has not experienced any significant credit losses. Accounts receivable are recorded at the executed contract amount and generally do not bear interest. Collateral is not required.

*Property and Equipment.* Property and equipment are recorded at cost. Major additions and improvements that materially extend useful lives of property and equipment are capitalized. Maintenance and repairs are charged against the results of operations as incurred. When these assets are sold or otherwise disposed of, the asset and related depreciation are relieved, and any gain or loss is included in the consolidated statements of income for the period of sale or disposal. Depreciation and amortization is computed on a straight-line basis over the following estimated useful lives of the assets:

Furniture and fixtures	3 to 5 years
Computer hardware and software	3 to 5 years
Leasehold improvements	2 to 5 years (Lesser of lease term or useful life of improvement)

Rental payments on operating leases are charged to expense in the consolidated statements of income on a straight-line basis over the lease term.

*Organization Costs.* Costs of start-up activities, including organization costs, are expensed as incurred.

*Patents.* Patents includes the cost of patents or patent rights (hereinafter, collectively "patents"), acquired from third-parties or acquired in connection with business combinations. Patent acquisition costs are amortized utilizing the straight-line method over their remaining economic useful lives, ranging from one to ten years.

*Goodwill.* Goodwill is tested for impairment at the reporting unit level (operating segment or one level below an operating segment) on an annual basis (December 31 for Acacia) and between annual tests if an event occurs or circumstances change that would more likely than not reduce the fair value of a reporting unit below its carrying value. Acacia considers its market capitalization and the carrying value of its assets and liabilities, including goodwill, when performing its goodwill impairment test. When conducting its annual goodwill impairment assessment, the Company initially performs a qualitative evaluation of whether it is more likely than not that goodwill is impaired. If it is determined by a qualitative evaluation that it is more likely than not that goodwill is impaired, the Company then applies a two-step impairment test. The two-step impairment test first compares the fair value of the Company's reporting unit to its carrying or book value. If the fair value of the reporting unit exceeds its carrying value, goodwill is not impaired and the Company is not required to perform further testing. If the carrying value of the reporting unit exceeds its fair value, the Company determines the implied fair value of the reporting unit's goodwill and if the carrying value of the reporting unit's goodwill exceeds its implied fair value, then an impairment loss equal to the difference is recorded in the consolidated statement of income.

*Impairment of Long-lived Assets.* Acacia reviews long-lived assets and intangible assets for potential impairment annually (quarterly for patents) and when events or changes in circumstances indicate the carrying amount of an asset may not be recoverable. In the event the sum of the expected undiscounted future cash flows resulting from the use of the asset is less than the carrying amount of the asset, an impairment loss equal to the excess of the asset's carrying value over its fair value is recorded. If an asset is determined to be impaired, the loss is measured based on quoted market prices in active markets, if available. If quoted market prices are not available, the estimate of fair value is based on various valuation techniques, including a discounted value of estimated future cash flows.

**ACACIA RESEARCH CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

*Fair Value of Financial Instruments.* The carrying value of cash and cash equivalents, investments, accounts receivables, accounts payable and accrued expenses approximates their fair values due to their short-term maturities.

*Stock-Based Compensation.* The compensation cost for all stock-based awards is measured at the grant date, based on the fair value of the award, and is recognized as an expense, on a straight-line basis, over the employee's requisite service period (generally the vesting period of the equity award) which is generally two to four years. The fair value of restricted stock and restricted stock unit awards is determined by the product of the number of shares or units granted and the grant date market price of the underlying common stock. The fair value of each option award is estimated on the date of grant using a Black-Scholes option valuation model. Stock-based compensation expense is recorded only for those awards expected to vest using an estimated forfeiture rate. Refer to Note 11 to these notes to consolidated financial statements for information on stock-based awards granted for the periods presented.

*Income Taxes.* Income taxes are accounted for using an asset and liability approach that requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been recognized in Acacia's consolidated financial statements or consolidated tax returns. A valuation allowance is established to reduce deferred tax assets if all, or some portion, of such assets will more than likely not be realized.

Under U.S. generally accepted accounting principles, a tax position is a position in a previously filed tax return or a position expected to be taken in a future tax filing that is reflected in measuring current or deferred income tax assets and liabilities. Tax positions are recognized only when it is more likely than not (likelihood of greater than 50%), based on technical merits, that the position will be sustained upon examination. Tax positions that meet the more likely than not threshold are measured using a probability weighted approach as the largest amount of tax benefit that is greater than 50% likely of being realized upon settlement.

Acacia recognizes interest and penalties with respect to unrecognized tax benefits in income tax expense. Acacia has identified no uncertain tax position for which it is reasonably possible that the total amount of unrecognized tax benefits will significantly increase or decrease within 12 months.

If a deduction reported on a tax return for an equity-based incentive award exceeds the cumulative compensation cost for those instruments recognized for financial reporting purposes, any resulting realized tax benefit that exceeds the previously calculated deferred tax asset for those instruments is considered an excess tax benefit, and is recognized as additional paid-in capital.

*Comprehensive Income (Loss).* Comprehensive income (loss) is the change in equity from transactions and other events and circumstances other than those resulting from investments by owners and distributions to owners.

*Segment Reporting.* Acacia uses the management approach, which designates the internal organization that is used by management for making operating decisions and assessing performance as the basis of Acacia's reportable segments. Acacia's intellectual property licensing and enforcement business constitutes its single reportable segment.

*Use of Estimates.* The preparation of financial statements in conformity with generally accepted accounting principles in the United States of America requires management to make estimates and assumptions that affect the reported amount of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from these estimates. Acacia believes that, of the significant accounting policies described herein, the accounting policies associated with revenue recognition, stock-based compensation expense, impairment of marketable securities and intangible assets, the determination of the economic useful life of amortizable intangible assets, income taxes and valuation allowances against net deferred tax assets and the application of the acquisition method of accounting for business combinations, require its most difficult, subjective or complex judgments.

*Earnings Per Share.* Basic income per share is computed based upon the weighted-average number of common shares outstanding, excluding unvested restricted stock. Diluted income per share is computed based upon the weighted-average number of common shares outstanding, including the dilutive effect of common stock equivalents outstanding during the periods. Potentially dilutive common stock equivalents primarily consist of employee stock options, unvested restricted stock, and restricted stock units ("Equity-based Incentive Awards").

Potentially dilutive common shares from Equity-based Incentive Awards are determined by applying the treasury stock method to the assumed exercise of outstanding employee stock options, and the assumed vesting of outstanding unvested restricted stock and restricted stock units.

**ACACIA RESEARCH CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

The following table presents the weighted-average number of common shares outstanding used in the calculation of basic and diluted income per share:

	<u>2012</u>	<u>2011</u>	<u>2010</u>
Weighted-average common shares outstanding - basic	47,251,061	39,743,433	32,306,322
Dilutive effect of equity-based incentive awards	809,586	1,514,864	2,775,289
Weighted-average common shares outstanding - diluted	<u>48,060,647</u>	<u>41,258,297</u>	<u>35,081,611</u>
Anti-dilutive equity-based incentive awards excluded from the computation of diluted income (loss) per share	<u>522,552</u>	<u>77,760</u>	<u>14,768</u>

*Treasury Stock.* Repurchases of the Company's outstanding common stock are accounted for using the cost method. The applicable par value is deducted from the appropriate capital stock account on the formal or constructive retirement of treasury stock. Any excess of the cost of treasury stock over its par value is charged to additional paid-in capital, and reflected as Treasury Stock on the consolidated balance sheet.

*Recently Adopted Accounting Pronouncements - Adopted Effective January 1, 2012.* In September 2011, the Financial Accounting Standards Board ("FASB") issued guidance on testing goodwill for impairment. The new guidance provides an entity the option to first perform a qualitative assessment to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount. If an entity determines that this is the case, it is required to perform the currently prescribed two-step goodwill impairment test to identify potential goodwill impairment and measure the amount of goodwill impairment loss to be recognized for that reporting unit (if any). If an entity determines that the fair value of a reporting unit is greater than its carrying amount, the two-step goodwill impairment test is not required. The adoption of this accounting guidance did not have a material impact on the Company's consolidated financial statements and related disclosures.

In June 2011, the FASB issued new guidance on the presentation of comprehensive income. The new guidance allows an entity to present components of net income and other comprehensive income in one continuous statement, referred to as the statement of comprehensive income, or in two separate, but consecutive statements. The new guidance eliminates the current option to report other comprehensive income and its components in the statement of changes in stockholders' equity. While the new guidance changes the presentation of comprehensive income, there are no changes to the components that are recognized in net income or other comprehensive income from that of current accounting guidance. This new guidance is effective for fiscal years and interim periods beginning after December 15, 2011. In December 2011, the FASB issued an amendment to defer the presentation on the face of the financial statements the effects of reclassifications out of accumulated other comprehensive income on the components of net income and other comprehensive income for annual and interim financial statements. The adoption of this accounting guidance did not have a material impact on the Company's consolidated financial statements and related disclosures.

In May 2011, the FASB issued a new accounting standard on fair value measurements that clarifies the application of existing guidance and disclosure requirements, changes certain fair value measurement principles and requires additional disclosures about fair value measurements. The standard is effective for interim and annual periods beginning after December 15, 2011. The adoption of this accounting guidance did not have a material impact on the Company's consolidated financial statements and related disclosures.

*Recent Accounting Pronouncements - Not Yet Adopted.* In February 2013, the FASB issued a new accounting standard requiring an entity to report the effect of significant reclassifications out of accumulated other comprehensive income on the respective line items in net income if the amount being reclassified is required under U.S. Generally Accepted Accounting Principles ("U.S. GAAP") to be reclassified in its entirety to net income. For other amounts that are not required under U.S. GAAP to be reclassified in their entirety to net income in the same reporting period, an entity is required to cross-reference other disclosures required under U.S. GAAP that provide additional detail about those amounts. This pronouncement is effective prospectively for reporting periods beginning after December 15, 2012. We do not anticipate the adoption of this standard to have a material impact on the Company's consolidated financial statements and related disclosures.

In December 2012, the FASB issued a new accounting standard that will require the Company to disclose information about offsetting and related arrangements to enable users of its financial statements to understand the effect of those arrangements on its financial position. The new guidance is effective for the Company's interim period ending March 31, 2013. The disclosures required are to be applied retrospectively for all comparative periods presented. The Company does not expect



**ACACIA RESEARCH CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

that this guidance will have an impact on its financial position, results of operations or cash flows as it is disclosure-only in nature.

**3. SHORT-TERM INVESTMENTS**

Short-term investments at December 31, 2012 were comprised of an equity investment in the common stock of certain technology companies and investments in highly liquid, AAA, U.S. government fixed income securities with maturity dates ranging from 2013 to 2014. Short-term marketable securities for the periods presented were comprised of the following (in thousands):

<u>Security Type</u>	December 31, 2012			
	Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
U.S. government fixed income securities	\$ 87,394	\$ 20	\$ (411)	\$ 87,003
Equity securities of certain technology companies	3,254	—	(782)	2,472
<b>Total short-term investments</b>	<b>\$ 90,648</b>	<b>\$ 20</b>	<b>\$ (1,193)</b>	<b>\$ 89,475</b>

<u>Security Type</u>	December 31, 2011			
	Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
Equity securities of certain technology companies	8,427	169	(1,999)	6,597
<b>Total short-term investments</b>	<b>\$ 8,427</b>	<b>\$ 169</b>	<b>\$ (1,999)</b>	<b>\$ 6,597</b>

Short-term marketable securities in unrealized loss positions at December 31, 2012 and 2011 have been in continuous unrealized loss positions for less than one year.

*U.S. government fixed income securities.* The gross unrealized loss can be primarily attributed to a combination of market conditions as well as the demand for and duration of the U.S. government fixed income securities. The Company has the ability to hold these securities until maturity, currently has no intent to sell, there is no requirement to sell and the Company believes that it can recover the amortized cost of these investments.

*Equity securities.* The gross unrealized loss can be primarily attributed to volatility associated with technology company equity securities and related fluctuations in equity market conditions and trends. During the year ended December 31, 2012, the fair value of the equity securities fluctuated significantly, resulting in gross unrealized gains and losses ranging from 60% to (42)%, respectively, during the year. Subsequent to December 31, 2012, the Company's equity security holdings are in an unrealized gain position. In addition, the Company is aware of certain industry analyst reports with one-year price targets that tend to support classification of the December 31, 2012 unrealized loss position of its equity securities as temporary. The Company believes that it can recover the amortized cost of these investments.

The Company has found no evidence of impairment due to credit losses in its portfolio. Therefore, these unrealized losses were recorded in other comprehensive income (loss). However, the Company cannot provide any assurance that its portfolio of short-term marketable securities will not be impacted by adverse conditions in the financial markets, which may require the Company in the future to record an impairment charge for credit losses which could adversely impact its financial results.

For the year ended December 31, 2012, proceeds from the sale of short-term marketable securities classified as available-for-sale were \$319,811,000, gross realized gains were \$31,000 and gross realized losses were \$555,000. Proceeds from the sale of short-term marketable securities classified as available-for-sale and related gross realized gains and losses were not material for the years ended December 31, 2011 and 2010.

#### 4. PROPERTY AND EQUIPMENT

Property and equipment consists of the following at December 31, 2012 and 2011 (in thousands):

	<u>2012</u>	<u>2011</u>
Furniture and fixtures	\$ 472	\$ 344
Computer hardware and software	586	454
Leasehold improvements	173	165
	<u>1,231</u>	<u>963</u>
Less: accumulated depreciation and amortization	(892)	(743)
	<u>\$ 339</u>	<u>\$ 220</u>

Depreciation expense was \$149,000, \$105,000 and \$86,000 for the years ended December 31, 2012, 2011 and 2010, respectively. In 2011, the Company retired \$232,000 of fully depreciated items held in property and equipment.

#### 5. ACCOUNTS PAYABLE AND ACCRUED EXPENSES / COSTS

Accounts payable and accrued expenses / costs consist of the following at December 31, 2012 and 2011 (in thousands):

	<u>2012</u>	<u>2011</u>
Accounts payable	\$ 557	\$ 354
Payroll and other employee benefits	1,815	909
Accrued vacation	703	693
Accrued legal expenses - patent	3,990	1,765
Accrued consulting and other professional fees	1,510	1,286
Accrued patent acquisition related payments	250	900
Accrued distribution to noncontrolling interests	504	—
Accrued taxes payable	85	583
Other accrued liabilities	71	135
	<u>\$ 9,485</u>	<u>\$ 6,625</u>

#### 6. PATENTS

Acacia's only identifiable intangible assets are patents and patent rights, with estimated remaining economic useful lives ranging from one to nine years. For all periods presented, all of Acacia's identifiable intangible assets were subject to amortization. The gross carrying amounts and accumulated amortization related to acquired intangible assets as of December 31, 2012 and 2011 are as follows (in thousands):

	<u>2012</u>	<u>2011</u>
Gross carrying amount - patents	\$ 383,379	\$ 61,519
Accumulated amortization - patents	(69,850)	(36,331)
Patents, net	<u>\$ 313,529</u>	<u>\$ 25,188</u>

The weighted-average remaining estimated economic useful life of Acacia's patents and patent rights is 7 years. Scheduled annual aggregate amortization expense for each of the next five years through December 31, 2017 is estimated to be \$45,144,000 in 2013, \$44,864,000 in 2014, \$44,387,000 in 2015, \$43,560,000 in 2016, and \$39,644,000 in 2017.

For the years ended December 31, 2012, 2011 and 2010, on a consolidated basis, Acacia's operating subsidiaries

**ACACIA RESEARCH CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

incurred and capitalized patent and patent rights acquisition costs totaling \$178,260,000 (excluding the acquisition of ADAPTIX), \$14,680,000 and \$8,224,000, respectively. The patents have estimated economic useful lives ranging from one to eight years. Included in capitalized patent costs as of December 31, 2012 and 2011 are \$0 and \$900,000, respectively, of accrued future patent-related acquisition costs that management expects to incur pursuant to the terms of the underlying patent acquisition agreements, which are being amortized over the estimated economic useful life of the patents acquired.

Refer to Note 8 to these consolidated financial statements for additions to patents and goodwill in connection with Acacia's acquisition of ADAPTIX and the related application of the acquisition method of accounting.

During the periods presented, certain operating subsidiaries recovered up-front patent portfolio acquisition costs from applicable net licensing proceeds prior to the scheduled amortization of such up-front patent portfolio acquisition costs, resulting in the acceleration of amortization expense for the applicable patent-related assets. For the years ended December 31, 2012, 2011 and 2010, accelerated amortization expense related to the recovery of up-front patent acquisition costs totaled \$10,574,000, \$3,111,000 and \$1,171,000, respectively.

For the years ended December 31, 2012, 2011 and 2010, pursuant to the terms of the respective inventor agreements, certain Acacia operating subsidiaries elected to terminate or sell their rights to patent portfolios, resulting in the acceleration of amortization expense for the patent-related assets totaling \$2,823,000, \$821,000 and \$275,000, respectively.

For the years ended December 31, 2012, 2011 and 2010, patent costs and accumulated amortization related to patent-related sales and disposals are as follows (in thousands):

	<u>2012</u>	<u>2011</u>	<u>2010</u>
Patent costs	5,500	4,612	1,540
Accumulated amortization	2,466	3,509	1,108

For the years ended December 31, 2012, 2011 and 2010, patent proceeds and other costs related to patent-related sales and disposals are as follows (in thousands):

	<u>2012</u>	<u>2011</u>	<u>2010</u>
Proceeds	3,347	11,000	240
Other costs	—	4,717	94

**7. FAIR VALUE MEASUREMENTS AND AUCTION RATE SECURITIES**

As of December 31, 2011, Acacia held investment grade auction rate securities with a par value totaling \$2,425,000, consisting of auction rate investments backed by student loans, which are classified as noncurrent, available-for-sale and reflected at fair value. The fair values of these securities were estimated utilizing an analysis of certain unobservable inputs (Level 3) and by reference to periodic discounted cash flow analyses. These analyses considered, among other items, the underlying structure of each security, the collateral underlying the security investments, the creditworthiness of the counterparty, the present value of future principal and contractual interest payments discounted at rates considered to be reflective of current market conditions, consideration of the probabilities of default, continued auction failure, or repurchase or redemption at par for each period, and estimates of the time period over which current liquidity related issues will be resolved.

All outstanding auction rate securities as of December 31, 2011, were sold during the year ended December 31, 2012. The following table presents the auction rate securities measured at fair value on a recurring basis using significant unobservable inputs (Level 3) for the periods presented (in thousands):

**ACACIA RESEARCH CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

	<b>2012</b>	<b>2011</b>
<b>Auction rate securities:</b>		
Beginning balance as of January 1	\$ 1,956	\$ 2,001
Total gains (realized or unrealized):		
Recognized gains included in earnings	118	15
Settlements	(2,074)	(60)
Ending balance as of December 31	\$ —	\$ 1,956

**8. ACQUISITION**

On January 12, 2012 (the “Acquisition Date”), pursuant to the terms and conditions of the Agreement and Plan of Merger dated as of November 22, 2011 (the “Merger Agreement”) among Acacia Research Group LLC (“ARG”), a wholly-owned subsidiary of Acacia, Apollo Patent Corp., a newly-formed, wholly-owned subsidiary of ARG (“Merger Sub”), ADAPTIX, a Delaware corporation, and Baker Communications Fund II (QP), L.P. solely in its capacity as shareholder representative, ARG completed its acquisition of ADAPTIX, which held no material assets other than its portfolio of patents and \$10 million in cash, through a merger of Merger Sub with and into ADAPTIX, with ADAPTIX as the surviving corporation (the “Merger”). Upon completion of the Merger, the separate corporate existence of Merger Sub ceased and ADAPTIX became a wholly-owned subsidiary of ARG.

ADAPTIX, a pioneer in the development of 4G technologies for wireless systems, is an award-winning technology company long recognized in the industry as one of the first developers of cutting edge 4G wireless systems. With patents filed as early as 2000, ADAPTIX’s research and development efforts have resulted in one of the most significant intellectual property portfolios focused on 4G technologies. With its rapidly growing portfolio of 230 issued and pending patents in 13 countries, ADAPTIX’s innovations extend across a broad range of 4G technologies including OFDMA and MIMO.

The Merger is being accounted for in accordance with the acquisition method of accounting under FASB ASC Topic 805, “*Business Combinations*” (“Topic 805”). Topic 805 requires, among other things, that identifiable assets acquired and liabilities assumed be recognized at their fair values as of the Acquisition Date. Under the acquisition method of accounting, the purchase consideration is allocated to the assets acquired, including tangible assets, patents and other identifiable intangible assets and liabilities assumed, based on their estimated fair market values on the date of acquisition. Any excess purchase price after the initial allocation to identifiable net tangible and identifiable intangible assets is assigned to goodwill. Amounts attributable to patents are amortized using the straight-line method over the estimated economic useful life of the underlying patents.

The total consideration paid by ARG in connection with the Merger was approximately \$160 million, in cash. Based on the total purchase consideration and the estimate of the assets acquired and the liabilities assumed by ARG as of the Acquisition Date, the purchase price allocation was as follows (\$ amounts in thousands):

		<b>Amortization Period</b>		<b>Annual Amortization</b>
<b>Assets Acquired and Liabilities Assumed:</b>				
Fair value of net tangible assets acquired	\$ 10,000			
Intangible assets acquired - patents	150,000	10 years	\$	15,000
Goodwill	30,149			
Net deferred income tax liability	(30,149)			
Total	\$ 160,000			

Amounts attributable to the patents acquired are being amortized using the straight-line method over an estimated weighted average economic useful life of the underlying patents, which is estimated to be approximately 10 years. Goodwill is calculated as the residual after recording the identifiable net assets acquired and associated net deferred tax assets and liabilities.

Management is responsible for determining the fair value of the tangible and identifiable intangible assets acquired and liabilities assumed as of the Acquisition Date. Management considered a number of factors, including reference to an

**ACACIA RESEARCH CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

analysis under Topic 805 solely for the purpose of allocating the purchase price to the assets acquired and liabilities assumed. The analysis included a discounted cash flow which estimated future net cash flows resulting from the licensing and enforcement of the patent portfolio based on information as of the date of acquisition, considering assumptions and estimates related to potential infringers of the patents, applicable industries, usage of the underlying patented technologies, estimated license fee revenues, contingent legal fee arrangements, other estimated costs, tax implications and other factors. A discount rate consistent with the risks associated with achieving the estimated net cash flows was used to estimate the present value of estimated net cash flows.

The Merger is being treated for tax purposes as a nontaxable transaction and as such, the historical tax bases of the acquired assets and assumed liabilities, net operating losses, and other tax attributes of ADAPTIX will carryover. As a result, no new tax goodwill will be created in connection with the Merger as there is no step-up to fair value of the underlying tax bases of the acquired net assets. Acquisition accounting includes the establishment of a net deferred tax asset or liability resulting from book tax basis differences related to assets acquired and liabilities assumed on the date of acquisition. Acquisition date deferred tax assets primarily relate to certain net operating loss carryforwards of ADAPTIX. Acquisition date deferred tax liabilities relate to specifically identified non-goodwill intangibles acquired. The estimated net deferred tax liability was determined as follows (\$ amounts in thousands):

	<u>Book Basis</u>	<u>Tax Basis</u>	<u>Difference</u>
Intangible assets acquired - patents	\$ 150,000	\$ —	\$ (150,000)
Estimated acquired deferred tax assets (including net operating loss carryforwards) - ADAPTIX	—	63,860	63,860
Net deferred tax liability - pretax			(86,140)
Estimated tax rate			35%
Estimated net deferred tax liability			<u>\$ (30,149)</u>

The following unaudited pro forma combined results of operations for periods presented are provided for illustrative purposes only and assume the acquisition occurred as of January 1, 2011. The unaudited pro forma combined financial results do not purport to be indicative of the results of operations for future periods or the results that actually would have been realized had the entities been a single entity during these periods. The unaudited pro forma combined results are presented in thousands, except share and per share information.

	<u>2012</u>	<u>2011</u>
Revenues	\$ 250,727	\$ 172,256
Total operating costs and expenses	170,953	159,674
Operating income	79,774	12,582
Interest and investment income	937	96
Income from operations before provision for income taxes	80,711	12,678
Provision for income taxes	(22,060)	(8,708)
Net income including noncontrolling interests in operating subsidiaries	58,651	3,970
Net loss (income) attributable to noncontrolling interests in operating subsidiaries	164	(539)
Net income attributable to Acacia Research Corporation	<u>\$ 58,815</u>	<u>\$ 3,431</u>
	<u>2012</u>	<u>2011</u>
Pro forma income per common share attributable to Acacia Research Corporation:		
Basic earnings per share	\$ 1.24	\$ 0.09
Diluted earnings per share	<u>\$ 1.22</u>	<u>\$ 0.08</u>
Weighted average number of shares outstanding, basic	47,251,061	39,743,433
Weighted average number of shares outstanding, diluted	<u>48,060,647</u>	<u>41,258,297</u>

Pro forma adjustments primarily relate to the amortization of identifiable intangible assets acquired over an estimated

**ACACIA RESEARCH CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

economic useful life of ten years, historical operating expenses of ADAPTIX for 2012 and 2011, and the expensing of acquisition costs incurred by ARG in connection with the Merger.

The unaudited pro forma combined statements of income for the periods presented herein have been adjusted to give effect to pro forma events that are expected to have a continuing impact on the combined results. As such, the income tax benefit related to the release of valuation allowance reflected in the statement of income for 2012, as described at Note 10, is not reflected in the accompanying unaudited pro forma combined statements of income for the periods presented.

**9. STOCKHOLDERS' EQUITY**

*Equity Offerings*

In February 2012, Acacia raised gross proceeds of \$225,000,000 through the sale of 6,122,449 shares of Acacia's common stock at a price of \$36.75 per share in a private placement offering with certain institutional accredited investors. Net proceeds, net of placement agent fees and estimated offering expenses, totaled approximately \$218,961,000. Acacia intends to use the net proceeds of this private placement to finance pending and future acquisitions of patents and patent royalties and other patent licensing vehicles and companies with patent assets, and for working capital and general corporate purposes.

In March 2011, Acacia completed a public offering of 5,750,000 shares of common stock. The public offering price was \$31.50 per share, and the net proceeds to the Company totaled approximately \$175,229,000, after deducting underwriting discounts and related offering expenses. Acacia retained broad discretion over the use of the net proceeds from the sale of common stock and intends to use the net proceeds for operations and for other general corporate purposes, including, but not limited to, working capital, strategic acquisitions and other transactions.

*Repurchases of Common Stock*

On November 16, 2012, Acacia's Board of Directors authorized a program for repurchases of shares of Acacia's outstanding common stock. Under the stock repurchase program, effective November 16, 2012, Acacia was authorized to purchase in the aggregate up to \$100,000,000 of its outstanding common stock through the period ending May 15, 2013. Repurchases may be made from time to time by Acacia in the open market or in block purchases in compliance with applicable Securities and Exchange Commission rules. Repurchases to date were made using existing cash resources and occurred in the open market. The authorization to repurchase shares presented an opportunity to reduce the outstanding share count and enhance stockholder value. Following are our monthly stock repurchases for the fourth quarter of fiscal year 2012, all of which were purchased as part of publicly announced plans or programs:

	<b>Total Number of Shares Purchased</b>	<b>Average Price paid per Share</b>	<b>Approximate Dollar Value of Shares that May Yet be Purchased under the Program</b>
November 16, 2012 - November 30, 2012	256,262	\$ 21.58	\$ 94,470,000
December 1, 2012 - December 31, 2012	873,146	\$ 24.26	\$ 73,268,000
	<u>1,129,408</u>	\$ 23.65	

**ACACIA RESEARCH CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**10. INCOME TAXES**

Acacia's provision for income taxes consists of the following (in thousands):

	<u>2012</u>	<u>2011</u>	<u>2010</u>
<b>Current:</b>			
Federal	\$ —	\$ 179	\$ —
State taxes	281	943	1,473
Foreign taxes	11,890	7,586	267
<b>Total current</b>	<u>12,171</u>	<u>8,708</u>	<u>1,740</u>
<b>Deferred:</b>			
Federal	10,085	—	—
State taxes	(196)	—	—
<b>Total deferred</b>	<u>9,889</u>	<u>—</u>	<u>—</u>
<b>Provision for income taxes</b>	<u>\$ 22,060</u>	<u>\$ 8,708</u>	<u>\$ 1,740</u>

The tax effects of temporary differences and carryforwards that give rise to significant portions of deferred tax assets and liabilities consist of the following at December 31, 2012 and 2011 (in thousands):

	<u>2012</u>	<u>2011</u>
<b>Deferred tax assets:</b>		
Net operating loss and capital loss carryforwards and credits	\$ 15,668	\$ 7,626
Amortization and depreciation	—	6,252
Stock compensation	1,140	2,665
Basis of investments in affiliates	415	1,375
Accrued liabilities and other	250	471
Unrealized loss on short-term investments	415	746
State taxes	212	124
Other	—	278
<b>Total deferred tax assets</b>	<u>18,100</u>	<u>19,537</u>
<b>Deferred tax liabilities:</b>		
State taxes	—	—
Fixed assets and intangibles	(39,457)	—
Other	(60)	—
<b>Total deferred tax liabilities</b>	<u>(39,517)</u>	<u>—</u>
<b>Net deferred tax liabilities</b>	<u>(21,417)</u>	<u>19,537</u>
<b>Less: valuation allowance</b>	<u>(5,396)</u>	<u>(19,537)</u>
<b>Net deferred taxes</b>	<u>\$ (26,813)</u>	<u>\$ —</u>

**ACACIA RESEARCH CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

A reconciliation of the federal statutory income tax rate and the effective income tax rate is as follows:

	<u>2012</u>	<u>2011</u>	<u>2010</u>
Statutory federal tax rate	35 %	35 %	34 %
State income and foreign taxes, net of federal tax effect	15 %	27 %	5 %
Foreign tax credit	(15)%	(25)	—
Noncontrolling interests in operating subsidiaries	— %	(1)%	(3)%
Equity compensation	—	— %	(1)%
Nondeductible permanent items	5 %	4	—
Expired net operating loss carryforwards	— %	1 %	1
Valuation allowance	(13)%	(12)%	(32)%
	<u>27 %</u>	<u>29 %</u>	<u>4 %</u>

*Release of Valuation Allowance.* As of December 31, 2011, Acacia maintained a full valuation allowance against its net deferred tax assets. The net deferred tax liability resulting from the acquisition of ADAPTIX in January 2012 created an additional source of income to utilize against the majority of Acacia's existing consolidated net deferred tax assets. In addition, Acacia estimated that certain other deferred tax assets related to foreign tax credits and other state related deferrals were more likely than not realizable in future periods. Accordingly, the valuation allowance on the majority of the Company's net deferred tax assets was released, resulting in a financial statement income tax benefit of \$10,651,000 for the year ended December 31, 2012.

At December 31, 2012, the Company has recorded valuation allowances for certain tax attribute carryforwards and other deferred tax assets due to uncertainty that exists regarding future realizability. Valuation allowances were recorded on deferred tax assets related to capital loss carryforwards totaling \$2,935,000, and certain net operating loss carryforwards, totaling \$2,046,000, which expire in varying amounts from 2013 through 2032. The valuation allowance also includes \$415,000 related to unrealized losses on short-term investments and other deferred tax assets. If, in future periods, Acacia believes that it is more likely than not that these deferred tax benefits will be realized, the majority of the valuation allowances will be recognized in the statement of income.

At December 31, 2012, Acacia had U.S. federal and state income tax NOLs totaling approximately \$37,855,000 and \$55,559,000, expiring between 2025 and 2031, and 2013 and 2030, respectively, for which \$0 and \$554,000 of federal and state net operating losses are included as a deferred tax asset which will be credited to additional paid-in capital when realized as a reduction of taxes payable on Acacia's tax return. In addition, \$1,928,000 and \$33,166,000 of federal and state net operating losses are not included as a deferred tax asset and will be credited to additional paid-in capital when realized as a reduction of taxes payable on Acacia's tax return as they relate to unrecognized excess tax benefits (see additional information regarding the ordering of windfall tax benefits and use of the "with-and-without" approach below). As of December 31, 2012, \$0 and \$554,000 of the valuation allowance related to the tax benefits of stock option deductions included in Acacia's federal and state NOLs deferred tax asset, respectively.

Approximately \$33,736,000 of the U.S. federal NOLs, acquired in connection with the acquisition of ADAPTIX, are subject to an annual utilization limitation of approximately \$14,100,000, pursuant to the "change in ownership" provisions under Section 382 of the Internal Revenue Code of 1986, as amended (the "Code").

The Company has elected to utilize the "with-and-without approach" regarding ordering of windfall tax benefits to determine whether the windfall tax benefit has reduced taxes payable. Under this approach, the windfall tax benefits would be recognized in additional paid in capital only if an incremental tax benefit is realized after considering all other tax benefits presently available to the Company. Accordingly, the Company recorded income tax benefits of \$13,210,000 and \$583,000 through additional paid in capital in 2012 and 2011, respectively.

In addition, as of December 31, 2012 Acacia has approximately \$20,313,000 of foreign tax credits, expiring between 2015 and 2022. Realization of the credits as a reduction of taxes payable on Acacia's tax return will result in an income tax benefit recognizable through additional paid in capital since the entire amount of the credits have been utilized for financial statement purposes under the "with-and-without approach." In general, foreign taxes withheld may be claimed as a deduction on future U.S. corporate income tax returns, or as a credit against future U.S. income tax liabilities, subject to certain limitations. The tax provisions for the respective periods provide for the utilization of the foreign taxes withheld as a credit



**ACACIA RESEARCH CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

against income tax expense calculated for financial statement purposes.

The Company's effective tax rate for the year ended December 31, 2012 differs from the federal statutory rate primarily due to the benefit associated with the release of valuation allowance described above and the impact of foreign withholding taxes withheld by the applicable foreign tax authority, on revenue agreements executed during fiscal year 2012, with third party licensees domiciled in certain foreign jurisdictions, totaling \$11,890,000.

The increase in the Company's effective tax rate for the year ended December 31, 2011, as compared to the year ended December 31, 2010, primarily reflects the impact of foreign withholding taxes totaling \$7,586,000, which were withheld by the applicable foreign tax authority pursuant to the requirements of the applicable income tax convention, on payments in connection with certain licensing arrangements executed during fiscal year 2011. In general, foreign taxes withheld may be claimed as a deduction on future U.S. corporate income tax returns, or as a credit against future U.S. income tax liabilities, subject to certain limitations.

The deductions related to the exercise and vesting of equity-based incentive awards during the periods presented are, in general, available to offset taxable income on Acacia's consolidated tax returns (subject to suspension of use for certain tax years in California, as described below). Accordingly, the excess tax benefit related to the exercise and vesting of equity-based incentive awards for the periods presented, was credited to additional paid-in capital, not taxes payable. The actual tax benefit realized for excess tax deductions resulting from the exercise and vesting of equity-based incentive awards (noncash tax expense) totaled \$13,210,000, \$583,000 and \$1,302,000 for the years ended December 31, 2012, 2011 and 2010, respectively.

In October 2010, the State of California passed a state budget including provisions furthering the suspension of the use of NOLs, for the 2010 and 2011 tax years. As a result, California State NOLs were not available to offset California taxable income for the 2010 or 2011 tax years. As of December 31, 2012 the State of California has not extended the suspension period.

Acacia is subject to taxation in the U.S. and various state jurisdictions. With no material exceptions, Acacia is no longer subject to U.S. federal or state examinations by tax authorities for years before 1995. The U.S. Internal Revenue Service is auditing our 2010 Federal consolidated income tax return. The audit is in process and no findings or adjustments have been proposed by the IRS.

At December 31, 2012, the Company had total unrecognized tax benefits of approximately \$2,127,000, including a recorded noncurrent liability of \$85,000, related to unrecognized tax benefits primarily associated with state taxes. No interest and penalties have been recorded for the unrecognized tax benefits as of December 31, 2012. If recognized, approximately \$2,127,000 would impact the Company's effective tax rate. The Company does not expect that the liability for unrecognized tax benefits will change significantly within the next 12 months. Activity related to the gross unrecognized tax benefits for the year ended December 31, 2012 was as follows (in thousands):

Balance at January 1, 2012	\$	85
Additions based on tax positions related to the current year		—
Additions for tax positions related to prior years		772
Additions resulting from the acquisition of ADAPTIX		1,270
Reductions		—
Balance at December 31, 2012	<u>\$</u>	<u>2,127</u>

## **11. STOCK-BASED INCENTIVE PLANS**

The 2002 Acacia Technologies Stock Incentive Plan ("2002 Plan") and the 2007 Acacia Technologies Stock Incentive Plan ("2007 Plan") (collectively, the "Plans") were approved by the stockholders of Acacia in December 2002 and May 2007, respectively. Both Plans allow grants of stock options, stock awards and performance shares with respect to Acacia common stock to eligible individuals, which generally includes directors, officers, employees and consultants. Except as noted below, the terms and provisions of the Plans are identical in all material respects. The term of the 2002 Plan expired in December 2012.

Acacia's compensation committee administers the discretionary option grant and stock issuance programs. The

**ACACIA RESEARCH CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

compensation committee determines which eligible individuals are to receive option grants or stock issuances under those programs, the time or times when the grants or issuances are to be made, the number of shares subject to each grant or issuance, the status of any granted option as either an incentive stock option or a non-statutory stock option under the federal tax laws, the vesting schedule to be in effect for the option grant or stock issuance and the maximum term for which any granted option is to remain outstanding. The exercise price of options is generally equal to the fair market value of Acacia's common stock on the date of grant. Options generally begin to be exercisable six months to one year after grant and generally expire ten years after grant. Stock options generally vest over two to three years and restricted shares generally vest in full after two to three years (generally representing the requisite service period). The Plans terminate no later than the tenth anniversary of the approval of the incentive plans by Acacia's stockholders.

### **Programs**

The Plans provide for the following separate programs:

- *Discretionary Option Grant Program.* Under the discretionary option grant program, Acacia's compensation committee may grant (1) non-statutory options to purchase shares of common stock to eligible individuals in the employ or service of Acacia or its subsidiaries (including employees, non-employee board members and consultants) at an exercise price not less than 85% of the fair market value of those shares on the grant date, and (2) incentive stock options to purchase shares of common stock to eligible employees at an exercise price not less than 100% of the fair market value of those shares on the grant date (not less than 110% of fair market value if such employee actually or constructively owns more than 10% of Acacia's voting stock or the voting stock of any of its subsidiaries).
- *Stock Issuance Program.* Under the stock issuance program, eligible individuals may be issued shares of common stock directly, upon the attainment of performance milestones or the completion of a specified period of service or as a bonus for past services. Under this program, the purchase price for the shares shall not be less than 100% of the fair market value of the shares on the date of issuance, and payment may be in the form of cash or past services rendered.
- *Automatic Option Grant Program (2002 Plan only).* Commencing in fiscal 2008, each non-employee director will receive restricted stock units for the number of shares determined by dividing the annual retainer by the closing price of Acacia's common stock on the grant date, provided that such individual has served as a non-employee director for at least 6 months. In addition, as of May 2007, each new non-employee director will receive restricted stock units for the number of shares determined by dividing the annual board of directors retainer by the closing price of Acacia's common stock on the commencement date. Restricted stock units vest in a series of twelve quarterly installments over the three year period following the grant date, subject to immediate acceleration upon a change in control. Acacia will deliver shares corresponding to the vested restricted stock units within thirty (30) days after the first to occur of the following events: (i) the fifth (5th) anniversary of the grant date; or (ii) termination of the non-employee director's service as a member of the Company's Board of Directors. The non-employee directors do not have any rights, benefits or entitlements with respect to any shares unless and until the shares have been delivered.

The number of shares of common stock available for issuance under the 2002 Plan automatically increased on the first trading day of January each calendar year during the term of the Plan by an amount equal to three percent (3%) of the total number of shares of common stock outstanding on the last trading day in December of the immediately preceding calendar year, not to exceed 500,000 shares. The aggregate number of shares of common stock available for issuance under the 2002 Plan could not exceed 20,000,000 shares. At December 31, 2012, there were no shares available for grant under the expired 2002 Plan.

The initial share reserve under the 2007 Plan was 560,000 shares. The number of shares of common stock available for issuance under the 2007 Plan automatically increased on January 1, 2008 and 2009, by an amount equal to two percent (2%) of the total number of shares of common stock outstanding on the last trading day of December in the prior calendar year. After January 1, 2009, no new additional shares will be added to the 2007 Plan without stockholder approval (except for shares subject to outstanding awards that are forfeited or otherwise returned to the 2007 Plan). At December 31, 2012, there were no shares available for grant under the 2007 Plan.

Upon the exercise of stock options, the granting of restricted stock, or the delivery of shares pursuant to vested restricted stock units, it is Acacia's policy to issue new shares of common stock. Acacia's board of directors may amend or modify the Plans at any time, subject to any required stockholder approval.

**ACACIA RESEARCH CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

The following table summarizes stock option activity for the Plans for the year ended December 31, 2012:

	<u>Options</u>	<u>Weighted-Average</u>		<u>Aggregate Intrinsic Value</u>
		<u>Exercise Price</u>	<u>Remaining Contractual Term</u>	
Outstanding at December 31, 2011	434,000	\$ 5.55		
Exercised	(71,000)	\$ 4.77		
Expired/forfeited	(50,000)	\$ 4.66		
Outstanding at December 31, 2012	<u>313,000</u>	\$ 5.87	1.9 years	\$ 6,193,000
Vested	<u>313,000</u>	\$ 5.87	1.9 years	\$ 6,193,000
Exercisable at December 31, 2012	<u>313,000</u>	\$ 5.87	1.9 years	\$ 6,193,000

The aggregate intrinsic value of options exercised during the years ended December 31, 2012, 2011 and 2010 was \$1,796,000, \$2,822,000, and \$40,994,000, respectively. The aggregate fair value of options that vested during the years ended December 31, 2012, 2011 and 2010 was \$0, \$0 and \$209,000, respectively.

The following table summarizes nonvested restricted share activity for the year ended December 31, 2012:

	<u>Nonvested Restricted Shares</u>	<u>Weighted Average Grant Date Fair Value</u>
Nonvested restricted stock at December 31, 2011	1,505,000	\$ 21.01
Granted	1,339,000	\$ 32.17
Vested	(1,318,000)	\$ 21.90
Canceled	(173,000)	\$ 28.92
Nonvested restricted stock at December 31, 2012	<u>1,353,000</u>	\$ 30.17

The weighted-average grant date fair value of nonvested restricted stock granted during the years ended December 31, 2012, 2011 and 2010 was \$32.17, \$29.24, and \$8.61, respectively. The aggregate fair value of restricted stock that vested during the years ended December 31, 2012, 2011 and 2010 was \$28,865,000, \$11,043,000, \$6,914,000, respectively. As of December 31, 2012, the total unrecognized compensation expense related to nonvested restricted stock awards was \$34,976,000, which is expected to be recognized over a weighted-average period of approximately 1.7 years.

The following table summarizes restricted stock unit activity for the year ended December 31, 2012:

	<u>Restricted Stock Units</u>	<u>Weighted Average Grant Date Fair Value</u>
Nonvested restricted stock units outstanding at December 31, 2011	26,000	\$ 16.57
Granted	33,000	\$ 29.39
Vested	(21,000)	\$ 17.75
Nonvested restricted stock units outstanding at December 31, 2012	<u>38,000</u>	\$ 26.98
Vested restricted stock units outstanding at December 31, 2012	<u>89,000</u>	\$ 9.77

The weighted-average grant date fair value of restricted stock units granted during the years ended December 31, 2012, 2011 and 2010 was \$29.39, \$24.87 and \$11.99, respectively. The aggregate fair value of restricted stock units that vested during the years ended December 31, 2012, 2011 and 2010 was \$363,000, \$257,000 and \$158,000, respectively. As of December 31, 2012, the total unrecognized compensation expense related to restricted stock unit awards was \$932,000, which is expected to be recognized over a weighted-average period of approximately 2.3 years.

**12. COMMITMENTS AND CONTINGENCIES**

*Operating Leases*

Acacia leases certain office space under various operating lease agreements expiring at various dates from 2013 through 2020. Minimum annual rental commitments for operating leases of continuing operations having initial or remaining noncancellable lease terms in excess of one year are as follows (in thousands):

<b>Year</b>	
2013	\$ 1,078
2014	1,130
2015	1,138
2016	735
2017	320
Thereafter	822
Total minimum lease payments	<u>\$ 5,223</u>

Rent expense for the years ended December 31, 2012, 2011 and 2010 approximated \$898,000, \$915,000 and \$1,011,000, respectively. Rental payments are expensed in the statements of income in the period to which they relate. Scheduled rent increases are amortized on a straight-line basis over the lease term.

*Inventor Royalties and Contingent Legal Expenses*

In connection with the acquisition of certain patents and patent rights, certain of Acacia's operating subsidiaries executed related agreements which grant to the former owners of the respective patents or patent rights, the right to receive inventor royalties based on future net revenues (as defined in the respective agreements) generated as a result of licensing and otherwise enforcing the respective patents or patent portfolios.

Acacia's operating subsidiaries may retain the services of law firms that specialize in intellectual property licensing and enforcement and patent law in connection with their licensing and enforcement activities. These law firms may be retained on a contingent fee basis whereby such law firms are paid on a scaled percentage of any negotiated fees, settlements or judgments awarded based on how and when the fees, settlements or judgments are obtained.

The economic terms of the inventor agreements, operating agreements and contingent legal fee arrangements associated with the patent portfolios owned or controlled by Acacia's operating subsidiaries, if any, including royalty rates, contingent fee rates and other terms, vary across the patent portfolios owned or controlled by such operating subsidiaries. Inventor royalties, payments to noncontrolling interests and contingent legal fees expenses fluctuate period to period, based on the amount of revenues recognized each period, the terms and conditions of revenue agreements executed each period and the mix of specific patent portfolios with varying economic terms and obligations generating revenues each period. Inventor royalties, payments to noncontrolling interests and contingent legal fees expenses will continue to fluctuate and may continue to vary significantly period to period, based primarily on these factors.

During the years ended December 31, 2012, 2011 and 2010, Acacia entered into significant agreements with unrelated third parties resolving pending patent matters that resulted in the grant of certain intellectual property rights and recognition of revenues, portions of which were not subject to inventor royalty and contingent legal fee arrangements, as well as the grant of licenses from certain of Acacia's operating subsidiaries and recognition of revenues that were subject to inventor royalties and contingent legal fee arrangements. Revenues recognized subject to inventor royalties and contingent legal fees are based on a determination by the respective operating subsidiaries.

*Patent Enforcement and Other Litigation*

Acacia is subject to claims, counterclaims and legal actions that arise in the ordinary course of business. Management believes that the ultimate liability with respect to these claims and legal actions, if any, will not have a material effect on Acacia's consolidated financial position, results of operations or cash flows. Certain of Acacia's operating subsidiaries are often required to engage in litigation to enforce their patents and patent rights. In connection with any of Acacia's operating subsidiaries' patent enforcement actions, it is possible that a defendant may request and/or a court may rule that an operating subsidiary has violated statutory authority, regulatory authority, federal rules, local court rules, or governing standards relating

**ACACIA RESEARCH CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

to the substantive or procedural aspects of such enforcement actions. In such event, a court may issue monetary sanctions against Acacia or its operating subsidiaries or award attorney’s fees and/or expenses to a defendant(s), which could be material, and if required to be paid by Acacia or its operating subsidiaries, could materially harm the Company’s operating results and financial position.

*Guarantees and Indemnifications*

Certain of Acacia’s operating subsidiaries have made guarantees and indemnities under which they may be required to make payments to a guaranteed or indemnified party, in relation to certain transactions, including revenue transactions in the ordinary course of business. In connection with certain facility leases, Acacia and certain of its operating subsidiaries have indemnified lessors for certain claims arising from the facilities or the leases. Acacia indemnifies its directors and officers to the maximum extent permitted under the laws of the State of Delaware. However, Acacia has a directors and officers insurance policy that may reduce its exposure in certain circumstances and may enable it to recover a portion of future amounts that may be payable, if any. The duration of the guarantees and indemnities varies and, in many cases is indefinite but subject to statute of limitations. The majority of guarantees and indemnities do not provide any limitations of the maximum potential future payments that Acacia could be obligated to make. To date, Acacia has made no payments related to these guarantees and indemnities. Acacia estimates the fair value of its indemnification obligations to be insignificant based on this history and therefore, have not recorded any liability for these guarantees and indemnities in the accompanying consolidated balance sheets.

*Other*

In August 2010, a wholly owned subsidiary of Acacia became the general partner of the Acacia IP Fund, which was formed in August 2010. The Acacia IP Fund is authorized to raise up to \$250 million. The Acacia IP Fund acquires, licenses and enforces intellectual property consisting primarily of patents, patent rights, and patented technologies. Refer to Note 2 to these notes to consolidated financial statements for information regarding the consolidation of majority-owned subsidiaries and the presentation of related noncontrolling interests. At December 31, 2012 and 2011, the Acacia IP Fund net assets were primarily comprised of the following (in thousands):

	<b>December 31, 2012</b>	<b>December 31, 2011</b>
Cash and other assets	\$ 2,542	\$ 1,109
Patents, net of accumulated amortization	7,144	4,277
Investments - noncurrent	11,617	3,944
<b>Total assets</b>	<b>\$ 21,303</b>	<b>\$ 9,330</b>
Accrued expenses and contributions	\$ 5,016	\$ 4,495
Accrued patent acquisition costs	500	500
<b>Total liabilities</b>	<b>5,516</b>	<b>4,995</b>
<b>Net assets</b>	<b>\$ 15,787</b>	<b>\$ 4,335</b>

**13. RETIREMENT SAVINGS PLAN AND EXECUTIVE SEVERANCE POLICY**

*Retirement Savings Plan.* Acacia has an employee savings and retirement plan under section 401(k) of the Code (the “Plan”). The Plan is a defined contribution plan in which eligible employees may elect to have a percentage of their compensation contributed to the Plan, subject to certain guidelines issued by the Internal Revenue Service. Acacia may contribute to the Plan at the discretion of the board of directors. There were no contributions made by Acacia during the periods presented.

*Executive Severance Policy.* Under Acacia’s Amended Executive Severance Policy, full-time employees with the title of Senior Vice President and higher (“Officer”) are entitled to receive certain benefits upon termination of employment. If employment of an Officer is terminated for other than cause or other than on account of death or disability, Acacia will (i) promptly pay to the Officer a lump sum amount equal to the aggregate of (a) accrued obligations (i.e., the Officer’s annual base salary through the date of termination to the extent not theretofore paid and any compensation previously deferred by the

**ACACIA RESEARCH CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

Officer (together with any accrued interest or earnings thereon) and any accrued vacation pay, and reimbursable expenses, in each case to the extent not theretofore paid) and (b) three (3) months of the Officer's base salary for each full year that the Officer was employed by the Company (the "Severance Period"), up to a maximum of twelve (12) months of the Officer's base salary, and (ii) provide to the Officer, Acacia paid COBRA coverage for the medical and dental benefits selected by the Officer in the year in which the termination occurs, for the duration of the Severance Period.

**14. SUPPLEMENTAL CASH FLOW INFORMATION**

Cash paid for state income taxes totaled \$771,000, \$185,000 and \$211,000 for the years ended December 31, 2012, 2011 and 2010, respectively. Foreign taxes withheld totaled \$11,890,000, \$7,586,000 and \$268,000 for the years ended December 31, 2012, 2011 and 2010.

Refer to Note 6 to these notes to consolidated financial statements for information regarding noncash investing activity related to the acquisition of patents for the periods presented. Noncash financing activity for the year ended December 31, 2010 included accrued issuance costs associated with the funding of the Acacia IP Fund totaling \$210,000, \$117,000 of which was charged to additional-paid-in-capital and \$93,000 of which was charged to noncontrolling interests in operating subsidiaries. Cash flows from financing activities for the year ended December 31, 2012 excludes \$504,000 of accrued distributions payable to noncontrolling interests.

**ACACIA RESEARCH CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**15. QUARTERLY FINANCIAL DATA (unaudited)**

The following table sets forth unaudited consolidated statements of income data for the eight quarters in the period ended December 31, 2012. This information has been derived from Acacia's unaudited condensed consolidated financial statements that have been prepared on the same basis as the audited consolidated financial statements and, in the opinion of management, include all adjustments, consisting of normal recurring adjustments, necessary for a fair statement of the information when read in conjunction with the audited consolidated financial statements and related notes thereto. Acacia's quarterly results have been, and may in the future be, subject to significant fluctuations. As a result, Acacia believes that results of operations for interim periods should not be relied upon as any indication of the results to be expected in any future periods.

	Quarter Ended							
	Mar. 31, 2012	Jun. 30, 2012	Sept. 30, 2012	Dec. 31, 2012	Mar. 31, 2011	Jun. 30, 2011	Sept. 30, 2011	Dec. 31, 2011
	(Unaudited, In thousands, except share and per share information)							
Revenues	\$ 99,040	\$ 50,484	\$ 34,939	\$ 66,264	\$ 61,130	\$ 39,746	\$ 50,585	\$ 20,795
Operating costs and expenses:								
Cost of revenues:								
Inventor royalties	7,594	9,573	5,032	3,829	13,089	8,588	15,592	6,458
Contingent legal fees	3,748	6,607	8,833	5,463	9,367	13,039	12,328	5,547
Litigation and licensing expenses - patents	3,381	5,268	5,973	6,969	3,538	3,761	3,501	2,205
Amortization of patents	5,126	5,393	10,412	18,088	3,772	2,600	1,946	1,427
Verdict insurance proceeds	—	—	—	—	—	—	(12,451)	—
Verdict insurance proceeds related costs	—	—	—	—	—	—	7,661	—
Marketing, general and administrative expenses (including non-cash stock compensation expense)	13,731	11,903	11,914	16,535	9,981	8,302	8,748	8,662
Research, consulting and other expenses - business development	1,116	1,967	1,139	721	708	1,335	850	1,445
Total operating costs and expenses	34,696	40,711	43,303	51,605	40,455	37,625	38,175	25,744
Operating income (loss)	64,344	9,773	(8,364)	14,659	20,675	2,121	12,410	(4,949)
Total other income (expense)	56	102	(41)	820	29	24	25	18
Income (loss) before provision for (benefit from) income taxes	64,400	9,875	(8,405)	15,479	20,704	2,145	12,435	(4,931)
(Provision for) benefit from income taxes	(14,747)	(3,494)	1,938	(5,757)	(7,148)	(306)	(1,889)	635
Net income (loss) including noncontrolling interests	49,653	6,381	(6,467)	9,722	13,556	1,839	10,546	(4,296)
Net (income) loss attributable to noncontrolling interests	275	(60)	(152)	101	(1,203)	300	257	107
Net income (loss) attributable to Acacia Research Corporation	\$ 49,928	\$ 6,321	\$ (6,619)	\$ 9,823	\$ 12,353	\$ 2,139	\$ 10,803	\$ (4,189)
Net income (loss) per common share attributable to Acacia Research Corporation:								
Basic income (loss) per share	\$ 1.13	\$ 0.13	\$ (0.14)	\$ 0.20	\$ 0.35	\$ 0.05	\$ 0.26	\$ (0.10)
Diluted income (loss) per share	\$ 1.09	\$ 0.13	\$ (0.14)	\$ 0.20	\$ 0.34	\$ 0.05	\$ 0.25	\$ (0.10)
Weighted-average number of shares outstanding, basic	44,367,499	47,944,193	48,332,878	48,335,865	35,182,811	40,994,082	41,292,819	41,418,470
Weighted-average number of shares outstanding, diluted	45,771,228	48,938,766	48,332,878	48,797,304	36,448,005	42,453,782	42,857,880	41,418,470

## EXHIBIT INDEX

<b>Exhibit Number</b>	<b>Description</b>
2.1	Agreement and Plan of Merger, dated November 22, 2011, by and among Acacia Research Group LLC, Apollo Patent Corp., Adaptix, Inc., and Baker Communications Fund II (QP), L.P., solely in its capacity as representative for the shareholders of Adaptix, Inc.(15)
3.1	Amended and Restated Certificate of Incorporation (1)
3.2	Amended and Restated Bylaws
10.1*	Acacia Research Corporation 1996 Stock Option Plan, as amended (2)
10.2*	Form of Option Agreement constituting the Acacia Research Corporation 1996 Executive Stock Bonus Plan (3)
10.3*	2002 Acacia Technologies Stock Incentive Plan (4)
10.4*	2007 Acacia Technologies Stock Incentive Plan (5)
10.5*	Form of Acacia Technologies Stock Option Agreement for the 2007 Acacia Technologies Stock Incentive Plan (6)
10.6*	Form of Acacia Technologies Stock Issuance Agreement for the 2002 Acacia Technologies Stock Incentive Plan (6)
10.7*	Form of Acacia Technologies Stock Issuance Agreement for the 2007 Acacia Technologies Stock Incentive Plan (6)
10.8	Office Space Lease dated January 28, 2002, between Acacia Research Corporation and The Irvine Company (7)
10.9	Form of Indemnification Agreement (8)
10.10	Third Amendment to Lease dated January 28, 2002 between Acacia Research Corporation and the Irvine Company (9)
10.11*	Employment Agreement, dated January 28, 2005, by and between Acacia Technologies Services Corporation, and Dooyong Lee, as amended (10)
10.11.1*	Amendment to Employment Agreement, dated December 17, 2008, by and between Acacia Technologies, LLC and Dooyong Lee (13)
10.12*	Employment Agreement, dated April 12, 2004, by and between Acacia Media Technologies Corporation and Edward Treska (10)
10.12.1*	Addendum, dated March 31, 2008, to Employment Agreement by and between Acacia Media Technologies Corporation and Edward Treska (11)
10.13	Fourth Amendment to Lease dated January 28, 2002 between Acacia Research Corporation and the Irvine Company (10)
10.14	Fifth Amendment to Lease dated January 28, 2002 between Acacia Research Corporation and the Irvine Company (10)
10.15*	Employment Agreement, dated March 31, 2008, by and between Acacia Technologies, LLC and Paul Ryan (12)
10.15.1*	Amendment to Employment Agreement, dated December 17, 2008, by and between Acacia Technologies, LLC and Paul Ryan (12)
10.16*	Employment Agreement, dated March 31, 2008, by and between Acacia Technologies, LLC and Robert L. Harris (11)
10.16.1*	Amendment to Employment Agreement, dated December 17, 2008, by and between Acacia Technologies, LLC and Robert L. Harris (12)
10.17*	Amended Employment Agreement, dated March 31, 2008, by and between Acacia Technologies, LLC and Clayton J. Haynes (11)
10.17.1*	Amendment to Amended Employment Agreement, dated December 17, 2008, by and between Acacia Technologies, LLC and Clayton J. Haynes (12)
10.18*	Acacia Research Corporation Amended and Restated Executive Severance Policy (12)
10.19	Sixth Amendment to Lease dated January 28, 2002 between Acacia Research Corporation and the Irvine Company (14)
10.20	Form of Purchase Agreement (16)
18.1	Preferability Letter dated February 25, 2010 from Grant Thornton LLP, independent registered public accounting firm, regarding change in accounting principle (13)
21.1	List of Subsidiaries
23.1	Consent of Independent Registered Public Accounting Firm



24.1	Power of Attorney (included in the signature page hereto).
31.1	Certification of Chief Executive Officer Pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934
31.2	Certification of Chief Financial Officer Pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934
32.1	Certification of Chief Executive Officer Pursuant to Rule 13a-14(b)/15d-14(b) of the Securities Exchange Act of 1934 and 18 U.S.C. Section 1350
32.2	Certification of Chief Financial Officer Pursuant to Rule 13a-14(b)/15d-14(b) of the Securities Exchange Act of 1934 and 18 U.S.C. Section 1350
101	Interactive Data Files Pursuant to Rule 405 of Regulation S-T.

\* The referenced exhibit is a management contract, compensatory plan or arrangement required to be filed as an exhibit to this Annual Report on Form 10-K pursuant to Item 15(c) of Form 10-K.

- (1) Incorporated by reference to Acacia Research Corporation's Current Report on Form 8-K filed on June 5, 2008 (File No. 000-26068).
- (2) Incorporated by reference to Appendix A to Acacia Research Corporation's Definitive Proxy Statement on Schedule 14A filed on April 20, 2000 (File No. 000-26068).
- (3) Incorporated by reference to Appendix A to Acacia Research Corporation's Definitive Proxy Statement on Schedule 14A filed on April 26, 1996 (File No. 000-26068).
- (4) Incorporated by reference to Annex E to the Proxy Statement/Prospectus which formed part of Acacia Research Corporation's Registration Statement on Form S-4 (File No. 333-87654) which became effective on November 8, 2002.
- (5) Incorporated by reference to Acacia Research Corporation's Registration Statement on Form S-8 (File No. 333-144754) which became effective on July 20, 2007.
- (6) Incorporated by reference to Acacia Research Corporation's Quarterly Report on Form 10-Q for the period ended September 30, 2007, filed on November 2, 2007 (File No. 000-26068).
- (7) Incorporated by reference to Acacia Research Corporation's Annual Report on Form 10-K for the year ended December 31, 2001, filed on March 27, 2002 (File No. 000-26068).
- (8) Incorporated by reference to Acacia Research Corporation's Quarterly Report on Form 10-Q for the period ended June 30, 2012, filed on July 30, 2012 (File No. 000-26068).
- (9) Incorporated by reference to Acacia Research Corporation's Quarterly Report on Form 10-Q for the period ended March 31, 2006, filed on May 10, 2006 (File No. 000-26068).
- (10) Incorporated by reference to Acacia Research Corporation's Annual Report on Form 10-K for the year ended December 31, 2007, filed on March 14, 2008 (File No. 000-26068).
- (11) Incorporated by reference to Acacia Research Corporation's Current Report on Form 8-K filed on April 2, 2008 (File No. 000-26068).
- (12) Incorporated by reference to Acacia Research Corporation's Annual Report on Form 10-K for the year ended December 31, 2008, filed on February 26, 2009 (File No. 000-26068).
- (13) Incorporated by reference to Acacia Research Corporation's Annual Report on Form 10-K for the year ended December 31, 2009, filed on February 26, 2010, as amended on March 1, 2010 (File No. 000-26068)
- (14) Incorporated by reference to Acacia Research Corporation's Annual Report on Form 10-K for the year ended December 31, 2010, filed on February 28, 2011, as amended on March 24, 2011 (File No. 000-26068).

- (15) Incorporated by reference to Acacia Research Corporation's Current Report on Form 8-K/A filed on January 19, 2012 (File No. 000-26068). Portions of this exhibit have been omitted pursuant to a request for confidential treatment under Rule 24-b-2 of the Securities Exchange Act of 1934, as amended. The omitted material has been separately filed with the Securities and Exchange Commission.
- (16) Incorporated by reference to Acacia Research Corporation's Current Report on Form 8-K filed on February 16, 2012 (File No. 000-26068).

**BYLAWS OF  
ACACIA RESEARCH CORPORATION  
AS AMENDED AND RESTATED  
(A DELAWARE CORPORATION)**

**TABLE OF CONTENTS**

	PAGE
<b>ARTICLE 1. OFFICES</b>	1
ARTICLE 2. MEETINGS OF STOCKHOLDERS	1
ANNUAL MEETINGS	1
SPECIAL MEETINGS	2
BUSINESS WHICH MAY BE CONDUCTED	2
NOTICE	4
QUORUM AND ADJOURNMENT	5
VOTING	5
PROXIES	7
INSPECTORS OF ELECTION	7
CONDUCT OF MEETING	8
CONSENT OF ABSENTEES	8
ARTICLE 3. DIRECTORS	9
POWERS	9
NUMBER OF DIRECTORS	10
ELECTION AND TERM OF OFFICE	10
RESIGNATIONS AND VACANCIES	11
MEETINGS OF THE BOARD OF DIRECTORS	11
QUORUM	12
PARTICIPATION BY CONFERENCE TELEPHONE	12
WAIVER OF NOTICE	12
ADJOURNMENT	13
FEES AND COMPENSATION	13
ACTION WITHOUT MEETING	13
COMMITTEES	13
ARTICLE 4. OFFICERS	14
OFFICERS	14
ELECTION	14
SUBORDINATE OFFICERS	14
REMOVAL AND RESIGNATION	14
VACANCIES	15
THE CHAIRMAN OF THE BOARD	15
THE CHIEF EXECUTIVE OFFICER, PRESIDENT AND VICE-PRESIDENTS	15
THE SECRETARY AND ASSISTANT SECRETARY	16
THE TREASURER AND ASSISTANT TREASURER	16

ARTICLE 5. CERTIFICATE OF STOCK	17
LOST CERTIFICATES	
TRANSFER OF STOCK	
FIXING RECORD DATE	
REGISTERED STOCKHOLDERS	
ARTICLE 6. GENERAL PROVISIONS	19
MAINTENANCE AND INSPECTION OF RECORDS	
ANNUAL REPORT TO STOCKHOLDERS	
CHECKS; DRAFTS; EVIDENCE OF INDEBTEDNESS	
ENDORSEMENT OF DOCUMENTS; CONTRACTS	
REPRESENTATION OF SHARES OF OTHER CORPORATIONS	
STOCK PURCHASE PLANS	
CONSTRUCTION AND DEFINITIONS	
AMENDMENTS	
FISCAL YEAR	
DIVIDENDS	
LOANS TO OFFICERS AND EMPLOYEES	
ARTICLE 7. INDEMNIFICATION	22
RIGHT TO INDEMNIFICATION	
PREPAYMENT OF EXPENSES	
CLAIMS	
NONEXCLUSIVITY OF RIGHTS	
OTHER SOURCES	
AMENDMENT OR REPEAL	
OTHER INDEMNIFICATION AND PREPAYMENT OF EXPENSES	
INSURANCE	
INDEMNITY AGREEMENTS	

**AMENDED AND RESTATED  
BYLAWS OF  
ACACIA RESEARCH CORPORATION  
(A DELAWARE CORPORATION)**

**ARTICLE 1. OFFICES**

1.1 The registered office shall be in the City of Wilmington, County of New Castle, State of Delaware.

1.2 The corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the corporation may require.

**ARTICLE 2. MEETINGS OF STOCKHOLDERS**

2.1 All meetings of the stockholders shall be held at such place, within or without the State of Delaware, as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting or in a duly executed waiver of notice thereof.

2.2 The Secretary shall prepare and make, at least 10 days before every meeting of stockholders, a complete list of stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least 10 days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

**ANNUAL MEETINGS**

2.3 Annual meetings of stockholders shall be held at such date and time as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting, at which they shall elect directors and transact such other business as may properly be brought before the meeting. At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting.

## **SPECIAL MEETINGS**

2.4 Special meetings of the stockholders may be called only by the Board of Directors, the Chairman of the Board or the Chief Executive Officer and may not be called by any other person or persons. Upon such written request to the Secretary by any person or persons (other than the Board of Directors) entitled to call a special meeting of the stockholders, the Secretary shall cause notice to be given to the stockholders entitled to vote that a meeting will be held at a time requested by the person or persons calling the meeting, not less than 35 days nor more than 60 days after the receipt of the request. If notice of a special meeting of the stockholders is not given within 20 days after the Secretary's receipt of the request, the person or persons entitled to call the meeting may give the notice. Subject to the provisions of applicable law, only such business shall be considered at a special meeting of the stockholders as shall have been stated in the notice for such meeting.

## **BUSINESS WHICH MAY BE CONDUCTED**

2.5 Annual Meetings of the Stockholders.

2.5.1 Nominations of persons for election to the Board of Directors and the proposal of business to be considered by the stockholders may be made at an annual meeting of the stockholders only (A) pursuant to the corporation's notice of meeting (or any supplement thereto), (B) by or at the direction of the Board of Directors or (C) by any stockholder of the corporation who was a stockholder of record of the corporation at the time the notice provided for in this Section is delivered to the Secretary, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this Section.

2.5.2 For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (C) of subsection 2.5.1, the stockholder must have given timely notice thereof in writing to the Secretary and any such proposed business other than the nominations of persons for election to the Board of Directors must constitute a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the corporation not later than the close of business on the 90th day nor earlier than the close of business on the 120th day prior to the first anniversary of the preceding year's annual meeting (provided, however, that in the event that the date of the annual meeting is more than 30 days before or more than 70 days after such anniversary date, notice by the stockholder must be so delivered not earlier than the close of business on the 120th day prior to such annual meeting and not later than the close of business on the later of the 90th day prior to such annual meeting or the 10th day following the day on which public announcement of the date of such meeting is first made by the corporation). In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. Such stockholder's notice shall set forth: (A) as to each person whom the stockholder proposes to nominate for election as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "EXCHANGE ACT") and Rule 14a-11 thereunder (and such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); (B) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and, in the event that such business includes

a proposal to amend the Bylaws of the corporation, the language of the proposed amendment), the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (C) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (1) the name and address of such stockholder, as they appear on the corporation's books, and of such beneficial owner, (2) the class and number of shares of capital stock of the corporation which are owned beneficially and of record by such stockholder and such beneficial owner, (3) a representation that the stockholder is a holder of record of stock of the corporation entitled to vote at such meeting and intends to appear in person or by proxy at such meeting to propose such business or nomination, and (4) a representation whether the stockholder or beneficial owner, if any, intends or is part of a group which intends (x) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee and/or (y) otherwise to solicit proxies from stockholders in support of such proposal or nomination. The corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the corporation.

2.5.3 Notwithstanding anything in the second sentence of subsection 2.5.2 to the contrary, in the event that the number of directors to be elected to the Board of Directors at the annual meeting is increased and there is no public announcement by the corporation naming the nominees for the additional directorships at least 100 days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section shall also be considered timely, but only with respect to nominees for the additional directorships, if it shall be delivered to the Secretary of the corporation at the principal executive offices of the corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the corporation.

2.6 Special Meetings of the Stockholders. Only such business shall be conducted at a special meeting of the stockholders as shall have been brought before the meeting pursuant to the corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of the stockholders at which directors are to be elected pursuant to the corporation's notice of meeting only by or at the direction of the Board of Directors.

2.7 General.

2.7.1 Only persons who are nominated in accordance with the procedures set forth in this Section shall be eligible to be elected at an annual or special meeting of the stockholders of the corporation to serve as directors and only such business shall be conducted at a meeting of the stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section. Except as otherwise provided by law, the Chief Executive Officer, as chairman of the meeting, shall have the power and duty (A) to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination or proposal is made or solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such stockholder's nominee or proposal in compliance with such stockholder's representation as required by this Section) and (B) if any proposed nomination or business was not made or proposed in compliance with the Section, to declare that such nomination shall be disregarded or that such proposed business shall not be transacted.

2.7.2 For purposes of this Section, "PUBLIC ANNOUNCEMENT" shall include disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national



news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

2.7.3 Notwithstanding the foregoing provisions of this Section, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section. Nothing in this Section shall be deemed to affect any rights (A) of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act or (B) of the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the Certificate of Incorporation.

#### **NOTICE**

2.8 Written notice of each annual or special meeting shall be given not fewer than 10 days nor more than 60 days before the date of the meeting, to each stockholder entitled to vote at such meeting. Such notice shall state the place, date and hour of the meeting and (i) in the case of the annual meeting, those matters that the Board of Directors, at the time of the mailing of the notice, intends to present for action by the stockholders, and, subject to the provisions of applicable law, any other matters properly brought may be presented at the meeting for action, or (ii) in the case of a special meeting, the purpose or purposes for which the meeting was called, but, subject to the provisions of applicable law, no other business may be presented at the special meeting for action. The notice of any meeting at which directors are to be elected shall include the names of nominees intended at the time of the notice to be presented by the Board of Directors for election.

2.9 Notice of a stockholders' meeting shall be given by mail or by other means of written communication, addressed to the stockholder at the address of such stockholder appearing on the books of the corporation or given by the stockholder to the corporation for the purpose of notice. Notice by mail shall be deemed to have been given at the time a written notice is deposited in the United States mail, postage prepaid. Any other written notice shall be deemed to have been given at the time it is personally delivered to the recipient or is delivered to a common carrier for transmission, or actually transmitted by the person giving the notice by electronic means, to the recipient.

## QUORUM AND ADJOURNMENT

2.10 Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, at each meeting of stockholders the presence in person or by proxy of the holders of a majority in voting power of the outstanding shares of stock entitled to vote at the meeting shall be necessary and sufficient to constitute a quorum. In the absence of a quorum, the stockholders so present may, by a majority in voting power thereof, adjourn the meeting from time to time in the manner provided in Section 2.11 until a quorum shall attend.

2.11 Any meeting of stockholders, annual or special, may adjourn from time to time to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

## VOTING

2.12 The stockholders entitled to notice of any meeting or to vote at any such meeting shall be only persons in whose name shares stand on the stock records of the corporation on the record date determined in accordance with Section 5.7.

2.13 Voting at meetings of stockholders need not be by written ballot. At all meetings of stockholders for the election of directors, a plurality of the votes cast shall be sufficient to elect. All other elections and questions shall, unless otherwise provided by the Certificate of Incorporation, these Bylaws, the rules or regulations of any stock exchange applicable to the corporation or as otherwise provided by law or pursuant to any regulation applicable to the corporation, be decided by the affirmative vote of the holders of a majority in voting power of the shares of stock of the corporation which are present in person or by proxy and entitled to vote thereon.

2.14 Voting shall in all cases be subject to the provisions to the following provisions:

2.14.1 The stockholders of the corporation shall not have the right to cumulate their votes for the election of directors of the corporation.

2.14.2 Shares held by an administrator, executor, guardian, conservator or custodian may be voted by such holder either in person or by proxy, without a transfer of such shares into the holder's name; and shares standing in the name of a trust may be voted by the trustee of such trust, either in person or by proxy, but no trustee shall be entitled to vote shares held by such trust without a transfer of such shares into the trust's name.

2.14.3 Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into the receiver's name if authority to do so is contained in the order of the court by which such receiver was appointed.

2.14.4 Except where otherwise agreed in writing between the parties, a stockholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

2.14.5 Shares standing in the name of a minor may be voted and the corporation may treat all rights incident thereto as exercisable by the minor, in person or by proxy, whether or not the corporation has notice, actual or constructive, of the minor's actual age, unless a guardian of the minor's property has been appointed and written notice of such appointment given to the corporation.

2.14.6 Shares standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent or proxyholder of such other corporation as the bylaws of such other corporation may prescribe or, in the absence of such provision, as the board of directors of such other corporation may determine or, in the absence of such determination, by the chairman of the board, president or any vice president of such other corporation, or by any other person authorized to do so by the chairman of the board, president or any vice president of such other corporation. Shares which are purported to be voted or any proxy purported to be executed in the name of a corporation (whether or not any title of the person signing is indicated) shall be presumed to be voted or the proxy executed in accordance with the provisions of this clause, unless the contrary is shown.

2.14.7 Shares of the corporation owned by its subsidiaries shall not be entitled to vote on any matter.

2.14.8 If shares stand of record in the names of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, husband and wife as community property, tenants by the entirety, voting trustees, persons entitled to vote under a stockholder voting agreement or otherwise, or if two or more persons (including proxyholders) have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect:

- (a) If only one votes, such act binds all;
- (b) If more than one vote, the act of the majority so voting binds all; or
- (c) If more than one vote, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionately.

If the instrument so filed or the registration of the shares shows that any such tenancy is held in unequal interests, a majority or even split for the purpose of this Section shall be a majority or even split in interest.

## **PROXIES**

2.15 Each stockholder entitled to vote at a meeting of the stockholders may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by filing an instrument in writing revoking the proxy or by delivering a proxy in accordance with applicable law bearing a later date to the Secretary.

2.16 A proxy or consent validly delivered to the corporation shall mean any written authorization which is signed by the person executing the proxy, as well as any electronic transmission (to include without limitation transmissions by facsimile and by computer messaging systems), which is authorized by a stockholder or the stockholder's attorney in fact, which gives another person or persons power to vote with respect to the shares of such stockholder. A stockholder may authorize another person or persons to act for such stockholder as proxy by transmitting or authorizing the transmission of a telegram, cablegram, or other means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such telegram, cablegram or other means of electronic transmission must either set forth or be submitted with information from which it can be determined that the telegram, cablegram or other electronic transmission was authorized by the stockholder. If it is determined that such telegrams, cablegrams or other electronic transmissions are valid, the inspectors of election or, if there are no inspectors, such other persons making that determination shall specify the information upon which they relied. Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to this Section may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

## **INSPECTORS OF ELECTION**

2.17 In advance of any meeting of stockholders, the Board of Directors shall appoint inspectors of election to act at such meeting and any adjournment thereof. If inspectors of election are not so appointed, or if any persons so appointed fail to appear or refuse to act, the chairman of any such meeting may, and on the request of any stockholder or stockholder's proxy shall, make such appointment at the meeting. The number of inspectors shall be either one or three. If appointed at a meeting on the request of one or more stockholders or proxies, the majority of shares present shall determine whether one or three inspectors are to be appointed.

2.18 The duties of such inspectors shall include: determining the number of shares outstanding and the voting power of each; determining the shares represented at the meeting; determining the existence of a quorum; determining the authenticity, validity and effect of proxies; receiving votes, ballots or consents; hearing and determining all challenges and questions in any way arising in connection with the right to vote; counting and tabulating all votes or consents; determining when the polls shall close; determining the result; and doing such acts as may be proper to conduct the election or vote with fairness to all stockholders. If there are three inspectors of election, the decision, act or certificate of a majority is effective in all respects as the decision, act or certificate of all.

## **CONDUCT OF MEETING**

2.19 The Chief Executive Officer shall preside as chairman at all meetings of the stockholders. The chairman shall conduct each such meeting in a businesslike and fair manner, but shall not be obligated to follow any technical, formal or parliamentary rules or principles of procedure. The chairman's rulings on procedural matters shall be conclusive and binding on all stockholders, unless at the time of a ruling a request for a vote is made to the stockholders holding shares entitled to vote and which are represented in person or by proxy at the meeting, in which case the decision of a majority of such shares shall be conclusive and binding on all stockholders. Without limiting the generality of the foregoing, the chairman shall have all of the powers usually vested in the chairman of a meeting of stockholders.

## **CONSENT OF ABSENTEES**

2.20 The transactions of any meeting of stockholders, however called and noticed, and wherever held, are as valid as though conducted at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy, and if, either before or after the meeting, each of the persons entitled to vote, not present in person or by proxy, signs a written waiver of notice, or a consent to the holding of the meeting or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Attendance of a person at a meeting shall constitute a waiver of notice of and presence at such meeting, except when the person objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened and except that attendance at a meeting is not a waiver of any right to object to the consideration of matters required by the General Corporation Law of Delaware to be included in the notice but not so included, if such objection is expressly made at the meeting. Neither the business to be transacted at nor the purpose of any regular or special meeting of stockholders need be specified in any written waiver of notice, consent to the holding of the meeting or approval of the minutes thereof, except as provided in the General Corporation Law of Delaware.

## **ARTICLE 3. DIRECTORS**

### **POWERS**

3.1 Subject to limitations of the Certificate of Incorporation, of these Bylaws and of the General Corporation Law of Delaware relating to action required to be approved by the stockholders or by the outstanding shares, the business and affairs of the corporation shall be managed and all corporate powers shall be exercised by or under the direction of the Board of Directors and it shall have the final authority in matters of strategy and policy matters for the corporation.

The Board of Directors may delegate management duties for the operation of the business to those persons to whom authority is properly delegated by the Board of Directors, including officers of the corporation, provided that the business and affairs of the corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board of Directors. Without prejudice to such general powers, but subject to the same limitations, it is hereby expressly declared that the Board of Directors shall have the following powers in addition to the other powers enumerated in these Bylaws:

- (A) To select and remove all officers (in accordance with the provisions of these Bylaws), agents and employees of the corporation; prescribe the powers and duties for them as may not be inconsistent with law, the Certificate of Incorporation or these Bylaws; fix their compensation and require from them an affidavit providing for the good faith exercise of their duties only in the best interests of the corporation.
- (B) To conduct, manage and control the affairs and business of the corporation and to make such rules and regulations therefor not inconsistent with law, the Certificate of Incorporation or these Bylaws, as they may deem best.
- (C) To adopt, make and use a corporate seal, and to prescribe the forms of certificates of stock, and to alter the form of such seal and of such certificates from time to time as they may deem best.
- (D) To authorize the issuance of shares of stock of the corporation from time to time, upon such terms and for such consideration as may be lawful.
- (E) To borrow money and incur indebtedness for the purposes of the corporation, and to cause to be executed and delivered, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations or other evidences of debt and securities therefor.
- (F) To make, repeal, alter, amend and rescind any or all of these Bylaws.

## **NUMBER OF DIRECTORS**

3.2 The authorized number of directors of the corporation shall be not less than five nor more than nine. Within such limits, the Board of Directors may fix the exact number of directors by resolution duly adopted by the Board of Directors. The Board shall be divided into three classes in accordance with the provisions of the Certificate of Incorporation of the corporation. No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of the director's term of office.

## **ELECTION AND TERM OF OFFICE**

3.3 Only persons who are nominated by, or at the direction of the Board of Directors or the Chairman of the Board, or by a stockholder who has given timely written notice to the Secretary in accordance with these Bylaws, will be eligible for election as directors of the corporation.

3.4 For a person to be qualified to serve as a director of the corporation, such person need not be an employee or stockholder of the corporation during his or her directorship.

3.5 At each annual meeting of the stockholders, the successors of the class of directors whose term expires at that meeting shall be elected to hold office for a term expiring at the annual meeting of stockholders to be held in the third year following the year of their election, with each director in each class to hold office until his or her successor is duly elected and qualified or until his or her earlier death, resignation or removal.

## **RESIGNATIONS AND VACANCIES**

3.6 Any director may resign effective upon giving written notice to the Chairman of the Board, the Chief Executive Officer, the Secretary or the Board of Directors, unless the notice specifies a later time for the effectiveness of such resignation. If the resignation is effective at a future time, a successor may be elected to take office when the resignation becomes effective.

Any newly-created directorship resulting from an increase in the authorized number of directors or any vacancies in the Board of Directors occurring by reason of death, resignation, retirement, disqualification or removal may be filled by a majority of the remaining directors, though less than a quorum, or by a sole remaining director, and each director so elected shall hold office for a term that shall coincide with the remaining term of that class to which such director is elected. A director elected to fill a vacancy caused by death, resignation, retirement, disqualification or removal shall be a member of the class of which his predecessor was a member.

A vacancy or vacancies in the Board of Directors shall be deemed to exist in case of the death, resignation or removal of any director, or if the authorized number of directors is increased, or if the stockholders fail, at any annual or special meeting of the stockholders at which any director or directors are elected, to elect the full authorized number of directors to be voted for at that meeting.

Any director, or the entire Board, may be removed only for cause, by the affirmative vote of a majority of the shares then entitled to vote at the election of directors.

## **MEETINGS OF THE BOARD OF DIRECTORS**

3.7 Regular or special meetings of the Board of Directors shall be held at any place within or without the State of Delaware which has been designated from time to time by the Board of Directors. In the absence of such designation, regular meetings shall be held at the principal executive office of the corporation.

3.8 Following each annual meeting of stockholders, the Board of Directors shall hold a regular meeting for the purpose of organization, election of officers and the transaction of other business. Other regular meetings of the Board of Directors shall be held without call on such dates and at such times as may be fixed by the Board of Directors. Call and notice of all regular meetings of the Board of Directors are hereby dispensed with.

3.9 Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the Chairman of the Board, the Chief Executive Officer, the Secretary or by any two directors.

Special meetings of the Board of Directors shall be held upon four days' written notice or 48 hours' notice given personally or by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, telegraph, telex, facsimile electronic mail or other similar means of communication. Any such notice shall be addressed or delivered to each director at such director's address as it is shown upon the records of the corporation or as may have been given to the corporation by the director for purposes of notice or, if such address is not shown on such records or is not readily ascertainable, at the place in which the meetings of the directors are regularly held.

Notice by mail shall be deemed to have been given at the time a written notice is deposited in the United States mail, first-class postage prepaid. Any other written notice shall be deemed to have been given at the time it is personally delivered to the recipient or is delivered to a common carrier for transmission, or actually transmitted by the person giving the notice by electronic means, to the recipient. Oral notice shall



be deemed to have been given at the time it is communicated, in person or by telephone or wireless, to the recipient or to a person at the office of the recipient who the person giving the notice has reason to believe will promptly communicate it to the recipient.

### **QUORUM**

3.10 A majority of the whole Board of Directors constitutes a quorum of the Board of Directors for the transaction of business, except to adjourn as provided below in this Article. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board of Directors, unless a greater number be required by law or by the Certificate of Incorporation. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for such meeting.

### **PARTICIPATION BY CONFERENCE TELEPHONE**

3.11 Any meeting, regular or special, may be held by conference telephone or similar communication equipment, so long as all directors participating in the meeting can hear one another and all such directors shall be deemed to be present in person at the meeting.

### **WAIVER OF NOTICE**

3.12 Notice of a meeting need not be given to any director who signs a waiver of notice or a consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such director. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

## **ADJOURNMENT**

3.13 A majority of the directors present, whether or not a quorum is present, may adjourn any directors' meeting to another time and place. Notice of the time and place of holding an adjourned meeting need not be given to absent directors if the time and place be fixed at the meeting adjourned, except as provided in the next sentence. If the meeting is adjourned for more than 24 hours, notice of any adjournment to another time or place shall be given prior to the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

## **FEES AND COMPENSATION**

3.14 Directors and members of committees may receive such compensation, if any, for their services, and such reimbursement for expenses, as may be fixed or determined by the Board of Directors.

## **ACTION WITHOUT MEETING**

3.15 Any action required or permitted to be taken by the Board of Directors may be taken without a meeting if all members of the Board of Directors shall consent in writing to such action. Such consent or consents shall have the same effect as a unanimous vote of the Board of Directors and shall be filed with the minutes of the proceedings of the Board of Directors.

## **COMMITTEES**

3.16 The Board of Directors may appoint one or more committees, each consisting of one or more directors, and delegate to such committees any of the powers and authority of the Board of Directors, except no such committee shall have power or authority in reference to the following:

- (A) Approving, adopting or recommending to the stockholders any action or matter expressly required by the General Corporation Law of Delaware to be submitted to the stockholders for approval; or
- (B) Adopting, altering, amending or repealing these Bylaws or any of them.

Any such committee must be designated, and the members or alternate members thereof appointed, by resolution adopted by a majority of the authorized number of directors and any such committee may be designated an Executive Committee or by such other name as the Board of Directors shall specify. Alternate members of a committee may replace any absent member at any meeting of the committee. The Board of Directors shall have the power to prescribe the manner in which proceedings of any such committee shall be conducted. In the absence of any such prescription, such committee shall have the power to prescribe the manner in which its proceedings shall be conducted. Unless the Board of Directors or such committee shall otherwise provide, the regular and special meetings and other actions of any such committee shall be governed by the provisions of this Article applicable to meetings and actions of the Board of Directors. Minutes shall be kept of each meeting of each committee.

## **ARTICLE 4. OFFICERS**

### **OFFICERS**

4.1 The officers of the corporation shall be a Chief Executive Officer, a President, a Secretary and a Treasurer. The corporation may also have, at the discretion of the Board of Directors, a Chairman of the Board, one or more Vice Chairmen of the Board, one or more Vice Presidents, one or more Assistant Secretaries, one or more Assistant Treasurers, and such other officers as may be elected or appointed in accordance with the provisions of this Article.

### **ELECTION**

4.2 The officers of the corporation, except such officers as may be elected or appointed in accordance with the provisions of this Article, shall be chosen annually by, and shall serve at the pleasure of, the Board of Directors, and shall hold their respective offices until their resignation, removal, or other disqualification from service, or until their respective successors shall be elected.

### **SUBORDINATE OFFICERS**

4.3 The Board of Directors may elect, and may empower the Chief Executive Officer to appoint, such other officers as the business of the corporation may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in these Bylaws or as the Board of Directors may from time to time determine.

### **REMOVAL AND RESIGNATION**

4.4 Any officer may be removed, either with or without cause, by the Board of Directors at any time or, except in the case of an officer chosen by the Board of Directors, by any officer upon whom such power of removal may be conferred by the Board of Directors. Any such removal shall be without prejudice to the rights, if any, of the officer under any contract of employment of the officer.

Any officer may resign at any time by giving written notice to the corporation, but without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

## **VACANCIES**

4.5 A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in these Bylaws for regular election or appointment to such office.

### **THE CHAIRMAN OF THE BOARD**

4.6 The Chairman of the Board, if any, shall preside at all meetings of the Board of Directors and he or she shall have and may exercise such powers as are, from time to time, assigned to him or her by the Board of Directors and as may be provided by law.

4.7 In the absence of the Chairman of the Board, the Vice Chairman of the Board, if any, shall preside at all meetings of the Board of Directors and he or she shall have and may exercise such powers as are, from time to time, assigned to him or her by the Board of Directors and as may be provided by law.

### **THE CHIEF EXECUTIVE OFFICER, PRESIDENT AND VICE-PRESIDENTS**

4.8 Subject to such powers, if any, as may be given by the Board of Directors to the Chairman of the Board, if there be such an officer, the Chief Executive Officer is the general manager and chief executive officer of the corporation and has, subject to the control of the Board of Directors, general supervision, direction and control of the business and officers of the corporation. The Chief Executive Officer shall preside at all meetings of the stockholders and, in the absence of the Chairman of the Board, or if there be none, at all meetings of the Board of Directors. The Chief Executive Officer has the general powers and duties of management usually vested in a chief executive officer and general manager of a corporation and such other powers and duties as may be prescribed by the Board of Directors.

4.9 In the absence or disability of the Chief Executive Officer, the President shall perform all the duties of the Chief Executive Officer and, when so acting, shall have all the powers of, and be subject to all the restrictions upon, the Chief Executive Officer. The President shall have such other powers and perform such other duties as from time to time may be prescribed by the Board of Directors and the Chief Executive Officer.

4.10 In the absence or disability of the President, the Vice Presidents in order of their rank as fixed by the Board of Directors, or, if not ranked, the Vice President designated by the Board of Directors, shall perform all the duties of the President and, when so acting, shall have all the powers of, and be subject to all the restrictions upon, the President. The Vice Presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Board of Directors.

## **THE SECRETARY AND ASSISTANT SECRETARY**

4.11 The Secretary shall keep or cause to be kept, at the principal executive office and such other place as the Board of Directors may order, a book of minutes of all meetings of stockholders, the Board of Directors and its committees, with the time and place of holding, whether regular or special, and if special, how authorized, the notice thereof given, the names of those present at Board of Directors and committee meetings, the number of shares present or represented at stockholders' meetings, and the proceedings thereof. The Secretary shall keep, or cause to be kept, a copy of these Bylaws of the corporation at the principal executive office or such other place as the Board of Directors may order.

The Secretary shall keep, or cause to be kept, at the principal executive office or at the office of the corporation's transfer agent or registrar, if one has been appointed, a share register, or a duplicate share register, showing the names of the stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates issued for the same, and the number and date of cancellation of every certificate surrendered for cancellation.

The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and of the Board of Directors and any committees thereof required by these Bylaws or by law to be given, shall keep the seal of the corporation in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors.

4.12 The Assistant Secretary, or if there be more than one, the Assistant Secretaries in the order determined by the Board of Directors (or if there be no such determination, then in the order of their election) shall, in absence of the Secretary or in the event of his or her inability or refusal to act, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

## **THE TREASURER AND ASSISTANT TREASURER**

4.13 The Treasurer is the chief financial officer of the corporation and shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the corporation, and shall send or cause to be sent to the stockholders of the corporation such financial statements and reports as are by law or these Bylaws required to be sent to them. The books of account shall at all times be open to inspection by any director.

The Treasurer shall deposit all moneys and other valuables in the name and to the credit of the corporation with such depositories as may be designated by the Board of Directors. The Treasurer shall disburse the funds of the corporation as may be ordered by the Board of Directors, shall render to the President and the directors, whenever they request it, an account of all transactions as Treasurer and of the financial condition of the corporation, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors.

4.14 The Assistant Treasurer, or if there be more than one, the Assistant Treasurers in the order determined by the Board of Directors (or if there be no such determination, then in the order of their election) shall, in absence of the Treasurer or in the event of his or her inability or refusal to act, perform the duties and exercise the powers of the Treasurer and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

## **ARTICLE 5. CERTIFICATE OF STOCK**

5.1 The corporation's stock may be certificated or uncertificated, as provided under Delaware law, and shall be entered in the books of the corporation and registered as they are issued. Any certificates representing shares of stock shall be in such form as the Board of Directors shall prescribe, certifying the number and class of shares of the stock of the corporation owned by the shareholder. Any certificate issued to any shareholder of the corporation shall bear the name of the corporation and state that it is organized under the laws of the State of Delaware, the name of the shareholder, and the number and class (and the designation of the series, if any) of the shares represented. Each certificate shall be signed either manually or by facsimile, by the Chairman or Vice Chairman of the Board, or the President or a Vice President, and the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary, certifying the number of shares owned by the holder in the corporation.

Within a reasonable time after the issuance or transfer of uncertificated stock, the corporation shall send to the registered owner thereof a written notice that shall set forth the name of the corporation, that the corporation is organized under the laws of the State of Delaware, the name of the shareholder, the number and class (and the designation of the series, if any) of the shares represented, and any restrictions on the transfer or registration of such shares of stock imposed by the corporation's certificate of incorporation, these bylaws, any agreement among shareholders, or any agreement between shareholders and the corporation.

5.2 Certificates may be issued for partly paid shares and in such case upon the face or back of the certificates issued to represent any such partly paid shares, the total amount of the consideration to be paid therefor, and the amount paid thereon shall be specified.

5.3 If the corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualification, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the corporation shall issue to represent such class or series of stock, provided that, except as otherwise provided in Section 202 of the General Corporation Law of Delaware, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the corporation shall issue to represent such class or series of stock, a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

5.4 Any of or all the signatures on the certificate may be facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

### **LOST CERTIFICATES**

5.5 The Board of Directors may direct (i) a new certificate or certificates of stock or (ii) uncertificated shares in place of any certificate or certificates previously issued by the corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, or uncertificated shares, the Board of Directors may, in its discretion and as a condition precedent to the issuance

thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his or her legal representative, to advertise the same in such manner as it shall required and/or to give the corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

### **TRANSFER OF STOCK**

5.6 Upon surrender to the corporation or the transfer agent of the corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, it shall be the duty of the corporation to issue a new certificate or evidence of the issuance of uncertificated shares to the shareholder entitled thereto, cancel the old certificate and record the transaction upon the corporation's books.

Upon the receipt of proper transfer instruction from the registered owner of uncertificated shares, such uncertificated shares shall be cancelled, issuance of new equivalent uncertificated shares or certificated shares shall be made to the shareholder entitled thereto and the transaction shall be recorded upon the books of the corporation. If the corporation has a transfer agent or registrar acting on its behalf, the signature of any officer or representative thereof may be in facsimile.

The Board of Directors may appoint a transfer agent and one or more co-transfer agents and registrar and one or more co-registrars and may make or authorize such agent to make all such rules and regulations deemed expedient concerning the issue, transfer and registration of stock.

### **FIXING RECORD DATE**

5.7 In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of the stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date: (a) in the case of determination of stockholders entitled to vote at any meeting of stockholders or adjournment thereof, shall, unless otherwise required by law, not be more than 60 nor less than 10 days before the date of such meeting; (b) in the case of determination of stockholders entitled to express consent to corporate action in writing without a meeting, shall not be more than 10 days from the date upon which the resolution fixing the record date is adopted by the Board of Directors and (c) in the case of any other action, shall not be more than 60 days prior to such other action. If no record date is fixed: (a) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; (b) the record date for determining stockholders entitled to express consent to corporate action in writing without a meeting, when no prior action of the Board of Directors is required by law or the Certificate of Incorporation, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation in accordance with applicable law, or, if prior action by the Board of Directors is required by law or the Certificate of Incorporation, shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action and (c) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the

meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

## **REGISTERED STOCKHOLDERS**

5.8 The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

## **ARTICLE 6. GENERAL PROVISIONS**

### **MAINTENANCE AND INSPECTION OF RECORDS**

6.1 Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the corporation's stock ledger, a list of its stockholders, and its other books and records and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent is the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing that authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the corporation at its registered office in the State of Delaware or at its principal executive office.

6.2 Any director shall have the right to examine the corporation's stock ledger, a list of its stockholders, and its other books and records for a purpose reasonably related to the director's position as a director. The Court of Chancery is hereby vested with the exclusive jurisdiction to determine whether a director is entitled to the inspection sought. The Court may summarily order the corporation to permit the director to inspect any and all books and records, the stock ledger, and the stock list and to make copies or extracts therefrom. The Court may, in its discretion, prescribe any limitations or conditions with reference to the inspection, or award such other and further relief as the Court may deem just and proper.

### **ANNUAL REPORT TO STOCKHOLDERS**

6.3 At any point at which the corporation has less than 100 holders of record of its shares, this corporation expressly waives the annual report to stockholders. Notwithstanding the waiver of such annual report by the corporation, nothing herein shall be interpreted as prohibiting the Board of Directors from issuing voluntary annual or other periodic reports to stockholders during such time as the corporation has less than 100 holders of record.

### **CHECKS; DRAFTS; EVIDENCE OF INDEBTEDNESS**

6.4 From time to time, the Board of Directors shall determine by resolution which person or persons may sign or endorse all checks, drafts, other orders for the payment of money, notes or other evidences of indebtedness that are issued in the name of or payable to the corporation, and only the persons so authorized shall sign or endorse those instruments.

### **ENDORSEMENT OF DOCUMENTS; CONTRACTS**

6.5 Subject to the provisions of applicable law, any note, mortgage, evidence of indebtedness, contract, share certificate, conveyance or other instrument in writing and any assignment or endorsements thereof executed or entered into between the corporation and any other person, when signed by the Chairman of the



Board, the Chief Executive Officer, the President or any Vice President and the Secretary, any Assistant Secretary, the Treasurer or any Assistant Treasurer of the corporation shall be valid and binding on the corporation in the absence of actual knowledge on the part of the other person that the signing officers had no authority to execute the same. Any such instruments may be signed by any other person or persons and in such manner as from time to time shall be determined by the Board of Directors, and, unless so authorized by the Board of Directors, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or amount.

#### **REPRESENTATION OF SHARES OF OTHER CORPORATIONS**

6.6 The Chief Executive Officer or any other officer or officers authorized by the Board of Directors or the Chief Executive Officer are each authorized to vote, represent and exercise on behalf of the corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of the corporation. The authority herein granted may be exercised either by any such officer in person or by any other person authorized so to do by proxy or power of attorney duly executed by said officer.

#### **STOCK PURCHASE PLANS**

6.7 The corporation may adopt and carry out a stock purchase plan or agreement or stock option plan or agreement providing for the issue and sale for such consideration as may be fixed of its unissued shares, or of issued shares acquired or to be acquired, to one or more of the employees or directors of the corporation or of a subsidiary or to a trustee on their behalf and for the payment for such shares in installments or at one time, and may provide for aiding any such persons in paying for such shares by compensation for services rendered, promissory notes or otherwise.

Any such stock purchase plan or agreement or stock option plan or agreement may include, among other features, the fixing of eligibility for participation therein, the class and price of shares to be issued or sold under the plan or agreement, the number of shares which may be subscribed for, the method of payment therefor, the reservation of title until full payment therefor, the effect of the termination of employment, an option or obligation on the part of the corporation to repurchase the shares upon termination of employment, restrictions upon transfer of the shares, the time limits of and termination of the plan, and any other matters, not in violation of applicable law, as may be included in the plan as approved or authorized by the Board of Directors or any committee of the Board of Directors.

#### **CONSTRUCTION AND DEFINITIONS**

6.8 Unless the context otherwise requires, the general provisions, rules of construction and definitions contained in the General Corporation Law of Delaware shall govern the construction of these Bylaws.

#### **AMENDMENTS**

6.9 These Bylaws may be amended or repealed either by approval of 66-2/3% of the outstanding shares of the corporation entitled to vote on such action or by the approval of the Board of Directors, for those amendments to the Bylaws for which approval of the Board of Directors alone is sufficient under the General Corporation Law of Delaware.

#### **FISCAL YEAR**

6.10 The fiscal year of the corporation shall be fixed by resolution of the Board of Directors.

## **DIVIDENDS**

6.11 Dividends upon the capital stock of the corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors at any regular or special meeting, pursuant to law. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation.

6.12 Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purposes as the directors shall think conducive to the interest of the corporation, and the directors may modify or abolish any such reserve in the manner in which it was created.

## **LOANS TO OFFICERS AND EMPLOYEES**

6.13 The corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiaries, including any officer or employee who is a director of the corporation or its subsidiaries, whenever, in the judgment of the Board of Directors, such loan, guarantee or assistance may reasonably be expected to benefit the corporation. The loan, guarantee or other assistance may be with or without interest and may be unsecured, or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in these Bylaws shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute

## **ARTICLE 7. INDEMNIFICATION**

### **RIGHT TO INDEMNIFICATION**

7.1 The corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (an "INDEMNITEE") who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "PROCEEDING"), by reason of the fact that such person, or a person for whom he or she is the legal representative, is or was a director or officer of the corporation or, while a director or officer of the corporation, is or was serving at the written request of the corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or non-profit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such Indemnitee. Notwithstanding the preceding sentence, except as otherwise provided in Section 7.3, the corporation shall be required to indemnify an Indemnitee in connection with a proceeding (or part thereof) commenced by such Indemnitee only if the commencement of such proceeding (or part thereof) by the Indemnitee was authorized by the Board of Directors.

### **PREPAYMENT OF EXPENSES**

7.2 The corporation shall pay the expenses (including attorneys' fees) incurred by an Indemnitee in defending any proceeding in advance of its final disposition, PROVIDED, HOWEVER, that, to the extent required by law, such payment of expenses in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by the Indemnitee to repay all amounts advanced if it should be ultimately determined that the Indemnitee is not entitled to be indemnified under this Article or otherwise.

### **CLAIMS**

7.3 If a claim for indemnification of advancement of expenses under this Article is not paid in full within 60 days after a written claim therefor by the Indemnitee has been received by the corporation, the Indemnitee may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the corporation shall have the burden of proving that the Indemnitee is not entitled to the requested indemnification or advancement of expenses under applicable law.

### **NONEXCLUSIVITY OF RIGHTS**

7.4 The rights conferred on any Indemnitee by this Article shall not be exclusive of any other rights which such Indemnitee may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, these Bylaws, agreement, vote of the stockholders or disinterested directors or otherwise.

### **OTHER SOURCES**

7.5 The corporation's obligation, if any, to indemnify or to advance expenses to any Indemnitee who was or is serving at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise or non-profit entity shall be reduced by any amount such Indemnitee may collect as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, enterprise or non-profit entity.

## **AMENDMENT OR REPEAL**

7.6 Any repeal or modification of the foregoing provisions of this Article shall not adversely affect any right or protection hereunder of any Indemnitee in respect of any act or omission occurring prior to the time of such repeal or modification.

## **OTHER INDEMNIFICATION AND PREPAYMENT OF EXPENSES**

7.7 This Article shall not limit the right of the corporation, to the extent and in the manner permitted by law, to indemnify and to advance expenses to persons other than Indemnitees when and as authorized by appropriate corporate action.

## **INSURANCE**

7.8 The corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the corporation would have the power to indemnify such person against such expense, liability or loss under the law.

## **INDEMNITY AGREEMENTS**

7.9 The corporation may enter into agreements with any director, officer, employee or agent of the corporation, providing for indemnification to the fullest extent permissible under the law and the Certificate of Incorporation.

**AMENDMENT TO THE BYLAWS OF  
ACACIA RESEARCH CORPORATION**

Sections 5.1, 5.5 and 5.6 of the Bylaws of Acacia Research Corporation are hereby amended and restated as follows:

- 5.1 The corporation's stock may be certificated or uncertificated, as provided under Delaware law, and shall be entered in the books of the corporation and registered as they are issued. Any certificates representing shares of stock shall be in such form as the Board of Directors shall prescribe, certifying the number and class of shares of the stock of the corporation owned by the shareholder. Any certificate issued to any shareholder of the corporation shall bear the name of the corporation and state that it is organized under the laws of the State of Delaware, the name of the shareholder, and the number and class (and the designation of the series, if any) of the shares represented. Each certificate shall be signed either manually or by facsimile, by the Chairman or Vice Chairman of the Board, or the President or a Vice President, and the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary, certifying the number of shares owned by the holder in the corporation.

Within a reasonable time after the issuance or transfer of uncertificated stock, the corporation shall send to the registered owner thereof a written notice that shall set forth the name of the corporation, that the corporation is organized under the laws of the State of Delaware, the name of the shareholder, the number and class (and the designation of the series, if any) of the shares represented, and any restrictions on the transfer or registration of such shares of stock imposed by the corporation's certificate of incorporation, these bylaws, any agreement among shareholders, or any agreement between shareholders and the corporation.

**LOST CERTIFICATES**

- 5.5 The Board of Directors may direct (i) a new certificate or certificates of stock or (ii) uncertificated shares in place of any certificate or certificates previously issued by the corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, or uncertificated shares, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his or her legal representative, to advertise the same in such manner as it shall required and/or to give the corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

**TRANSFER OF STOCK**

- 5.6 Upon surrender to the corporation or the transfer agent of the corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, it shall be the duty of the corporation to issue a new certificate or evidence of the issuance of uncertificated shares to the shareholder entitled thereto, cancel the old certificate and record the transaction upon the corporation's books.

**CERTIFICATE OF AMENDMENT  
OF THE BYLAWS  
OF  
ACACIA RESEARCH CORPORATION**

The undersigned, who is the duly elected and acting Secretary of Acacia Research Corporation, a Delaware corporation (the “**Corporation**”), does hereby certify, as follows:

1. Section 2.13 of the Bylaws of the Corporation was amended and restated, by written consent of the Board of Directors of the Corporation, on May 17, 2012 to read in its entirety as follows:

“2.13 Voting at the meetings of stockholders shall be subject to the following provisions:

2.13.1 Voting at meetings of stockholders need not be by written ballot.

2.13.2 Except as provided in Section 3.6 and in this subsection, at all meetings of stockholders for the election of directors, each director shall be elected by the vote of the majority of the votes cast. A majority of votes cast means that the number of shares cast “for” a director’s election exceeds the number of votes cast “against” that director. The following shall not be votes cast: (a) a share whose ballot is marked as withheld; (b) a share otherwise present at the meeting but for which there is an abstention; and (c) a share otherwise present at the meeting as to which a stockholder gives no authority or direction.

The following procedures apply in a non-contested election. A nominee who does not receive a majority vote of the votes cast shall tender a written offer to resign to the Board of Directors within five business days of the certification of the stockholder vote. The Nominating and Governance Committee shall promptly consider the resignation offer and recommend to the full Board of Directors whether to accept the resignation. The Board of Directors will act on the Nominating and Governance Committee’s recommendation within 90 calendar days following certification of the stockholder vote. Thereafter, the Board of Directors will promptly disclose its decision whether to accept the director’s resignation offer and the reasons for rejecting the resignation offer, if applicable, in a current report on Form 8-K to be filed with the Securities and Exchange Commission within four business days of the Board of Directors’ determination. Any director who tenders his or her resignation pursuant to this provision shall not participate in the Nominating and Governance Committee recommendation or Board of Directors action regarding whether to accept the resignation offer.

In a contested election, the directors shall be elected by the vote of a plurality of the votes cast.

2.13.3 All other elections and questions shall, unless otherwise provided by the Certificate of Incorporation, these Bylaws, the rules or regulations of any stock exchange applicable to the corporation or as otherwise provided by law or pursuant to any regulation applicable to the corporation, be decided by the affirmative vote of the holders of a majority of the shares of stock of the corporation which are present in person or by proxy and entitled to vote thereon.

2. The foregoing amendment to the Bylaws of the Corporation has not been modified, amended, rescinded, or revoked and remains in full force and effect on the date hereof.

*[Remainder of page intentionally left blank; Signature page follows]*

**CERTIFICATE OF AMENDMENT OF BYLAWS**

IN WITNESS WHEREOF, I have hereunto subscribed my name on this 17th day of May, 2012.

/s/Edward Treska  
Edward Treska, Secretary

**SUBSIDIARIES OF THE REGISTRANT**

The following is a listing of the significant subsidiaries of Acacia Research Corporation:

Jurisdiction of  
Incorporation

Acacia Global Acquisition LLC and subsidiaries

Delaware

Acacia Research Group, LLC, formerly Acacia Patent Acquisition, LLC and subsidiaries

Delaware

Acacia Global Acquisition LLC and Acacia Research Group, LLC, wholly own multiple consolidated operating subsidiaries, that are included in Acacia Research Corporation's consolidated financial statements included elsewhere herein, each of which are separate and distinct legal entities, and all of which are in the patent acquisition, development, licensing and enforcement business. All of the operating subsidiaries wholly owned by Acacia Global Acquisition LLC and Acacia Research Group, LLC operate in the United States.



**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We have issued our reports dated February 28, 2013, with respect to the consolidated financial statements and internal control over financial reporting included in the Annual Report of Acacia Research Corporation on Form 10-K for the year ended December 31, 2012. We hereby consent to the incorporation by reference of said reports in the Registration Statements of Acacia Research Corporation on Forms S-3 (File No. 333-122452, effective February 1, 2005, File No. 333-157623, effective April 27, 2010, File No. 333-173045, effective March 24, 2011, File No. 333-180858, effective April 20, 2012) and on Forms S-8 (File No. 333-102181, effective December 23, 2002, File No. 333-109352, effective October 1, 2003, File No. 333-119811, effective October 19, 2004, File No. 333-127583, effective August 16, 2005, File No. 333-131463, effective February 1, 2006, File No. 333-140280, effective January 29, 2007, File No. 333-144754, effective July 20, 2007, File No. 333-149849, effective March 21, 2008, File No. 333-157626, effective March 2, 2009, File No. 333-165110, effective March 1, 2010, File No. 333-172538, effective March 1, 2011, File No. 333-179010, effective January 13, 2012).

/s/ GRANT THORNTON LLP

Irvine, California  
February 28, 2013

## CERTIFICATION

I, Paul R. Ryan, certify that:

1. I have reviewed this Annual Report on Form 10-K of Acacia Research Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: February 28, 2013

/s/ Paul R. Ryan

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**Paul R. Ryan**  
*Chairman and Chief Executive Officer*  
*(Principal Executive Officer)*

## CERTIFICATION

I, Clayton J. Haynes, certify that:

1. I have reviewed this Annual Report on Form 10-K of Acacia Research Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: February 28, 2013

/s/ Clayton J. Haynes

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**Clayton J. Haynes**  
**Chief Financial Officer**  
**(Principal Financial Officer)**

**CERTIFICATION**

In connection with the Annual Report of Acacia Research Corporation (the "Company") on Form 10-K for the fiscal year ended December 31, 2012, as filed with the Securities and Exchange Commission on February 28, 2013 (the "Report"), I, Paul R. Ryan, Chairman of the Board and Chief Executive Officer of the Company, certify, pursuant to Rule 13a-14(b) or Rule 15d-14(b) under the Securities Exchange Act of 1934 (15 U.S.C. 78m or 780(d)) and 18 U.S.C. Section 1350, that to the best of my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

By: /s/ Paul R. Ryan

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Paul R. Ryan  
Chief Executive Officer  
February 28, 2013

This certification accompanies this Report pursuant to Rule 13a-14(b) or Rule 15d-14(b) under the Securities Exchange Act of 1934 and 18 U.S.C. Section 1350 and shall not be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934.

**CERTIFICATION**

In connection with the Annual Report of Acacia Research Corporation (the "Company") on Form 10-K for the fiscal year ended December 31, 2012, as filed with the Securities and Exchange Commission on February 28, 2013 (the "Report"), I, Clayton J. Haynes, Chief Financial Officer of the Company, certify, pursuant to Rule 13a-14(b) or Rule 15d-14(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 780(d)) and 18 U.S.C. Section 1350, that to the best of my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

By: /s/ Clayton J. Haynes

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Clayton J. Haynes

Chief Financial Officer

February 28, 2013

This certification accompanies this Report pursuant to Rule 13a-14(b) or Rule 15d-14(b) under the Securities Exchange Act of 1934 and 18 U.S.C. Section 1350 and shall not be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934.