

OCLARO, INC.  
Form 10-Q  
May 09, 2013  
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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-Q**

(Mark One)

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

For the quarterly period ended March 30, 2013

OR

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number 000-30684

**OCLARO, INC.**

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(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)  
**20-1303994**  
(I.R.S. Employer  
Identification Number)  
**2560 Junction Avenue, San Jose, California 95134**  
(Address of principal executive offices, zip code)  
**(408) 383-1400**  
(Registrant's telephone number, including area code)

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

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

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

Large accelerated filer ☐ Accelerated filer ☒

Non-accelerated filer ☐ (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 Exchange Act): Yes ☐ No ☒

92,626,412 shares of common stock outstanding as of May 3, 2013

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**OCLARO, INC.**

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**Table of Contents****PART I. FINANCIAL INFORMATION****ITEM 1. FINANCIAL STATEMENTS (UNAUDITED)****OCLARO, INC.****CONDENSED CONSOLIDATED BALANCE SHEETS****(Unaudited)**

	March 30, 2013	June 30, 2012
	(Thousands, except par value)	
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 59,614	\$ 61,760
Restricted cash	16,919	614
Short-term investments	3,979	
Accounts receivable, net, including \$2,838 due from related parties at March 30, 2013	106,616	74,666
Inventories	133,645	78,444
Prepaid expenses and other current assets	28,493	12,582
Total current assets	349,266	228,066
Property and equipment, net	90,731	59,616
Intangible assets, net	36,917	16,645
Goodwill	10,904	10,904
Other non-current assets	6,652	13,075
Total assets	\$ 494,470	\$ 328,306
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable, including \$1,808 due to related parties at March 30, 2013	\$ 102,415	\$ 60,098
Accrued expenses and other liabilities	56,583	49,944
Capital lease obligations, current	10,218	
Note payable	15,611	
Credit line payable	39,995	25,500
Total current liabilities	224,822	135,542
Deferred gain on sale-leasebacks	10,878	12,722
Convertible notes payable	23,668	
Capital lease obligations, non-current	10,677	
Other non-current liabilities	23,285	12,391
Total liabilities	293,330	160,655
Commitments and contingencies (Note 10)		
Stockholders' equity:		
Preferred stock: 1,000 shares authorized; none issued and outstanding		
Common stock: \$0.01 par value per share; 175,000 shares authorized and 92,641 shares issued and outstanding at March 30, 2013; 90,000 shares authorized and 51,511 shares issued and outstanding at	926	515

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June 30, 2012		
Additional paid-in capital	1,426,834	1,330,172
Accumulated other comprehensive income	38,990	29,538
Accumulated deficit	(1,265,610)	(1,192,574)
Total stockholders' equity	201,140	167,651
Total liabilities and stockholders' equity	\$ 494,470	\$ 328,306

The accompanying notes form an integral part of these condensed consolidated financial statements.

**Table of Contents****OCLARO, INC.****CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS****(Unaudited)**

	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>March 30, 2013</b>	<b>March 31, 2012</b>	<b>March 30, 2013</b>	<b>March 31, 2012</b>
	(Thousands, except per share amounts)			
Revenues, including \$1,252 and \$8,592 from related parties for the three and nine months ended March 30, 2013, respectively	\$ 141,642	\$ 88,709	\$ 449,920	\$ 281,018
Cost of revenues	128,868	75,021	396,425	232,422
Gross profit	12,774	13,688	53,495	48,596
Operating expenses:				
Research and development	25,237	15,045	76,752	49,736
Selling, general and administrative	22,465	14,889	69,778	46,848
Amortization of intangible assets	2,400	775	6,828	2,224
Restructuring, acquisition and related (gains) costs, net	3,085	2,189	(7,944)	3,643
Flood-related (income) expense, net	(11,548)	(3,267)	(10,643)	5,821
(Gain) loss on sale of property and equipment	74	(13)	62	84
Total operating expenses	41,713	29,618	134,833	108,356
Operating loss	(28,939)	(15,930)	(81,338)	(59,760)
Other income (expense):				
Interest income (expense), net	(1,103)	(303)	(2,230)	(705)
Gain (loss) on foreign currency translation	(7,353)	(261)	(10,580)	2,429
Other income (expense)	(3,760)		(3,760)	2,238
Gain on bargain purchase			27,865	
Total other income (expense)	(12,216)	(564)	11,295	3,962
Loss before income taxes	(41,155)	(16,494)	(70,043)	(55,798)
Income tax provision	386	668	2,993	6,774
Net loss	\$ (41,541)	\$ (17,162)	\$ (73,036)	\$ (62,572)
Net loss per share:				
Basic	\$ (0.46)	\$ (0.34)	\$ (0.84)	\$ (1.25)
Diluted	\$ (0.46)	\$ (0.34)	\$ (0.84)	\$ (1.25)
Shares used in computing net loss per share:				
Basic	90,263	50,814	86,770	50,251
Diluted	90,263	50,814	86,770	50,251

The accompanying notes form an integral part of these condensed consolidated financial statements.

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**OCLARO, INC.**

**CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS**

**(Unaudited)**

	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>March 30,</b>	<b>March 31,</b>	<b>March 30,</b>	<b>March 31,</b>
	<b>2013</b>	<b>2012</b>	<b>2013</b>	<b>2012</b>
	(Thousands)			
Net loss	\$ (41,541)	\$ (17,162)	\$ (73,036)	\$ (62,572)
Other comprehensive income (loss):				
Unrealized gain (loss) on hedging transactions		77	(7)	11
Unrealized gain (loss) on marketable securities	(8)	3	4	(58)
Currency translation adjustments	4,294	2,256	9,110	(4,620)
Pension adjustment, net of tax benefits	156		345	
Total comprehensive loss	\$ (37,099)	\$ (14,826)	\$ (63,584)	\$ (67,239)

The accompanying notes form an integral part of these condensed consolidated financial statements.

**Table of Contents****OCLARO, INC.****CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS****(Unaudited)**

	<b>Nine Months Ended</b>	
	<b>March 30, 2013</b>	<b>March 31, 2012</b>
	<b>(Thousands)</b>	
<b>Cash flows from operating activities:</b>		
Net loss	\$ (73,036)	\$ (62,572)
Adjustments to reconcile net loss to net cash used in operating activities:		
Amortization of deferred gain on sale-leasebacks	(1,547)	(694)
Amortization of debt discount and issuance costs	86	
Depreciation and amortization	32,106	16,597
Impairment of other intangibles	864	
Adjustment in fair value of earnout obligation		(2,158)
Gain on bargain purchase	(27,865)	
Flood-related non-cash losses		7,905
Gain on sale of assets	(24,846)	
Stock-based compensation expense	5,440	4,930
Other non-cash adjustments	3,701	(4,101)
Changes in operating assets and liabilities:		
Accounts receivable, net	28,240	21,381
Inventories	1,201	9,665
Prepaid expenses and other current assets	(9,915)	822
Other non-current assets	(98)	(73)
Accounts payable	(18,883)	(16,957)
Accrued expenses and other liabilities	(7,133)	1,335
Net cash used in operating activities	(91,685)	(23,920)
<b>Cash flows from investing activities:</b>		
Purchases of property and equipment	(13,210)	(15,883)
Proceeds from sale of assets	26,000	2,900
Proceeds from sales of investments		3,438
Transfer from (to) restricted cash	3,691	(39)
Cash acquired from business combinations	36,123	
Net cash provided by (used in) investing activities	52,604	(9,584)
<b>Cash flows from financing activities:</b>		
Proceeds from issuance of common stock, net	1,712	71
Proceeds from borrowings under credit line	15,256	25,500
Proceeds from the sale of convertible notes, net	22,768	
Payments on capital lease obligations	(5,505)	
Repayments on borrowings and note payable	(1,147)	
Cash paid under earnout obligations	(8,628)	
Net cash provided by financing activities	24,456	25,571
Effect of exchange rate on cash and cash equivalents	12,479	(4,307)
Net decrease in cash and cash equivalents	(2,146)	(12,240)



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Cash and cash equivalents at beginning of period	61,760	62,783
Cash and cash equivalents at end of period	\$ 59,614	\$ 50,543
<b>Supplemental disclosures of non-cash transactions:</b>		
Issuance of common stock, stock options and stock appreciation rights related to the acquisition of Opnext	\$ 89,842	\$
Capital lease obligations incurred for purchases of property and equipment	(658)	
Issuance of common stock to settle Xtellus escrow liability		7,000
Issuance of common stock to settle Mintera earnout liability		2,758

The accompanying notes form an integral part of these condensed consolidated financial statements.

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**OCLARO, INC.**

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

**(Unaudited)**

**NOTE 1. BASIS OF PREPARATION**

***Basis of Presentation***

Oclaro, Inc., a Delaware corporation, is sometimes referred to in this Quarterly Report on Form 10-Q as Oclaro, we, us or our.

On July 23, 2012, we completed a merger by and among Opnext, Inc. (Opnext), Tahoe Acquisition Sub, Inc., a newly formed wholly-owned subsidiary of Oclaro (Merger Sub), and Oclaro, pursuant to which we acquired Opnext through a merger of Merger Sub with and into Opnext. The acquisition is more fully discussed in Note 5, *Business Combinations and Asset Dispositions*.

Our accompanying unaudited condensed consolidated financial statements as of March 30, 2013 and for the three and nine months ended March 30, 2013 and March 31, 2012 have been prepared in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP) for interim financial information and with the instructions to Article 10 of Securities and Exchange Commission (SEC) Regulation S-X, and include the accounts of Oclaro and all of our subsidiaries. Accordingly, they do not include all of the information and footnotes required by such accounting principles for annual financial statements. In the opinion of management, all adjustments (consisting only of normal recurring adjustments) considered necessary for a fair presentation of our consolidated financial position and results of operations have been included. The condensed consolidated results of operations for the three and nine months ended March 30, 2013 are not necessarily indicative of results that may be expected for any other interim period or for the full fiscal year ending June 29, 2013. The condensed consolidated balance sheet as of March 30, 2013 includes the assets and liabilities assumed in the Opnext acquisition. The condensed consolidated statements of operations and comprehensive loss for the three and nine months ended March 30, 2013, and the condensed consolidated statement of cash flows for the nine months ended March 30, 2013, include the results of operations of the combined entities from July 23, 2012, the date of the acquisition.

The condensed consolidated balance sheet as of June 30, 2012 has been derived from our audited financial statements as of such date, but does not include all disclosures required by U.S. GAAP. These unaudited condensed consolidated financial statements should be read in conjunction with our audited financial statements included in our Annual Report on Form 10-K for the year ended June 30, 2012 (2012 Form 10-K). The condensed consolidated balance sheet as of June 30, 2012, the statements of operations and comprehensive loss for the three and nine months ended March 31, 2012, and the statement of cash flows for the nine months ended March 31, 2012 do not reflect any assets or liabilities assumed in the acquisition or any results of operations from Opnext.

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements, as well as the reported amounts of revenue and expenses during the reported periods. These judgments can be subjective and complex, and consequently, actual results could differ materially from those estimates and assumptions. Descriptions of the key estimates and assumptions are included in our 2012 Form 10-K.

***Fiscal Years***

We operate on a 52/53 week year ending on the Saturday closest to June 30. Our fiscal year ending June 29, 2013 will be a 52 week year, with the quarter ended March 30, 2013 being a 13 week quarterly period. Our fiscal year ended June 30, 2012 was a 52 week year, with the quarter ended March 31, 2012 being a 13 week quarterly period.

***Reclassifications***

For presentation purposes, we have reclassified certain prior period amounts to conform to the current period financial statement presentation. These reclassifications did not affect our consolidated revenues, net loss, cash flows, cash and cash equivalents or stockholders' equity as previously reported.

### ***Future Cash Requirements***

We have experienced lower than expected year-to-date sales volume and our near-term liquidity has been negatively impacted, which will require us to secure additional sources of cash in order to continue to operate our business effectively. We have incurred operating losses and generated negative cash flows for the fiscal year. Given the reduction in sales, delays in production of new programs, the continuing costs of our previously announced restructuring activities and a soft macroeconomic commercial situation, we anticipate that our net loss for the fourth quarter will be equal to, or possibly greater than, our net loss for the third quarter, further reducing the amount of cash available to us to fund our continued operations. As a result, we will be required to secure additional sources of cash sooner than we had previously expected (and likely by the end of the first quarter of fiscal 2014) in order to fund our continued operations. On May 7, 2013 we secured one such additional source of cash, a short term bridge loan from Providence Equity of \$25 million (with net proceeds to us of \$20.5 million after discounts and expenses). See Note 18, *Subsequent Events*, for a description of this financing. In order to obtain this loan, we amended our Credit Agreement to add Providence as a term lender under that agreement. In connection with this amendment, we agreed to complete certain asset sales and use the proceeds to repay amounts we have borrowed under the Credit Agreement in the very near term. We are actively pursuing potential asset sales with multiple potential parties, but we can make no assurances that we will be successful concluding the assets sales we have agreed to complete, that we will be able to repay the amounts we have borrowed under the Credit Agreement as required and that we will be able to obtain sufficient additional cash to operate our business over the next twelve months. If we fail to raise the additional cash required, through asset sales or from other sources, we may not be able to continue as a going concern. For additional information on the risks we face related to future cash requirements, see Item 1A. Risk Factors under **Risks Related to Our Business**. We have a history of large operating losses and we may not be able to achieve profitability in the future and maintain sufficient levels of liquidity.

**Table of Contents****NOTE 2. RECENT ACCOUNTING STANDARDS**

In February 2013, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) No. 2013-02, *Comprehensive Income (Topic 220): Reporting of Amounts Reclassified Out of Accumulated Other Comprehensive Income*. This guidance requires disclosure on significant items reclassified out of accumulated other comprehensive income either in the notes or parenthetically on the face of the income statement. This update is effective for us in our third quarter of fiscal 2013 and is being applied prospectively. Other than requiring additional disclosures, adoption of this new guidance did not have a significant impact on our condensed consolidated financial statements.

In December 2011, the FASB issued ASU No. 2011-11, *Disclosures about Offsetting Assets and Liabilities*, which requires us to disclose gross information and net information about instruments and transactions eligible for offset in the statement of financial position. In January 2013, the FASB issued ASU No. 2013-01, *Balance Sheet (Topic 210): Clarifying the Scope of Disclosures about Offsetting Assets and Liabilities*, which clarifies the scope of the disclosures required under U.S. GAAP to derivatives and securities borrowing and lending transactions. ASU No. 2011-11 and ASU No. 2013-01 will be effective for our fiscal year beginning on June 30, 2013. The adoption of this update will require a change in the format of our current presentation.

**NOTE 3. BALANCE SHEET DETAILS**

The following table provides details regarding our cash and cash equivalents at the dates indicated:

	March 30, 2013	June 30, 2012
	(Thousands)	
<b>Cash and cash equivalents:</b>		
Cash-in-bank	\$ 57,613	\$ 59,759
Money market funds	2,001	2,001
	\$ 59,614	\$ 61,760

The following table provides details regarding our inventories at the dates indicated:

	March 30, 2013	June 30, 2012
	(Thousands)	
<b>Inventories:</b>		
Raw materials	\$ 52,242	\$ 26,392
Work-in-process	41,588	35,415
Finished goods	39,815	16,637
	\$ 133,645	\$ 78,444

The following table provides details regarding our property and equipment, net at the dates indicated:

	March 30, 2013	June 30, 2012
	(Thousands)	
<b>Property and equipment, net:</b>		
Buildings and improvements	\$ 11,341	\$ 9,465
Plant and machinery	114,343	138,924
Fixtures, fittings and equipment	4,336	1,854
Computer equipment	14,990	13,722
	145,010	163,965

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Less: Accumulated depreciation	(54,279)	(104,349)
	\$ 90,731	\$ 59,616

Property and equipment includes assets under capital leases of \$20.9 million at March 30, 2013, which were assumed in connection with the Opnext acquisition. Amortization associated with assets under capital leases is recorded in depreciation expense.

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The following table presents details regarding our accrued expenses and other liabilities at the dates indicated:

	March 30, 2013	June 30, 2012
	(Thousands)	
<b>Accrued expenses and other liabilities:</b>		
Trade payables	\$ 8,397	\$ 14,518
Compensation and benefits related accruals	14,681	9,701
Earnout liabilities for Mintera acquisition		8,628
Warranty accrual	6,261	2,599
Income tax payable	6,274	5,883
Other accruals	20,970	8,615
	\$ 56,583	\$ 49,944

The following table summarizes the activity related to our accrued restructuring charges for the nine months ended March 30, 2013:

	Lease Cancellations, Commitments and Other Charges	Termination Payments to Employees and Related Costs (Thousands)	Total Accrued Restructuring Charges
<b>Balance at June 30, 2012</b>	\$	\$ 2,306	\$ 2,306
Charged to restructuring costs	1,477	12,142	13,619
Paid or written-off	(1,243)	(10,266)	(11,509)
<b>Balance at March 30, 2013</b>	\$ 234	\$ 4,182	\$ 4,416
Current portion	234	2,680	2,914
Non-current portion		1,502	1,502

In connection with the acquisition of Opnext, we initiated a restructuring plan to integrate the businesses in the first quarter of fiscal year 2013. In connection with the integration, we recorded \$0.5 million and \$9.6 million in restructuring charges during the three and nine months ended March 30, 2013, respectively. The restructuring charges for the three months ended March 30, 2013, included \$0.3 million related to workforce reductions and \$0.2 million related to revised estimates for lease cancellations and commitments. The restructuring charges for the nine months ended March 30, 2013, included \$8.1 million related to workforce reductions, \$0.9 million related to the impairment of certain technology that is now considered redundant following the acquisition, \$0.4 million related to the write-off of net book value inventory that supported this technology, and \$0.2 million related to revised estimates for lease cancellations and commitments. During the three and nine months ended March 30, 2013, we made scheduled payments of \$0.4 million and \$8.2 million, respectively, to settle a portion of these restructuring liabilities. As of March 30, 2013, we had \$0.7 million in accrued restructuring liabilities related to this restructuring plan.

During fiscal year 2012, we initiated a restructuring plan in connection with the transfer of our Shenzhen, China manufacturing operations to Venture Corporation Limited (Venture). This transition is scheduled to occur in a phased and gradual transfer of products over three years. In connection with this transition, we recorded restructuring charges of \$1.1 million and \$4.0 million during the three and nine months ended March 30, 2013, respectively, for employee separation charges. During the three and nine months ended March 30, 2013, we made scheduled payments of \$0.2 million and \$2.1 million, respectively, to settle a portion of these restructuring liabilities. As of March 30, 2013, we had \$3.7 million in accrued restructuring liabilities related to this restructuring plan. We expect to incur between \$4.5 million and \$8.5 million in additional restructuring costs in connection with the transition of our Shenzhen manufacturing operations to Venture over the next two years.

The current portion of accrued restructuring liabilities is included in the caption accrued expenses and other liabilities and the non-current portion is included in the caption other non-current liabilities in the condensed consolidated balance sheet.



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The following table presents the components of accumulated other comprehensive income at the dates indicated:

	March 30, 2013	June 30, 2012
	(Thousands)	
<b>Accumulated other comprehensive income:</b>		
Currency translation adjustments	\$ 45,666	\$ 36,556
Unrealized gain on currency instruments designated as cash flow hedges		7
Unrealized loss on marketable securities	(187)	(191)
Adjustment for Swiss defined benefit plan	(6,489)	(6,834)
	\$ 38,990	\$ 29,538

**NOTE 4. FAIR VALUE**

We define fair value as the estimated price that would be received from selling an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. When determining fair value measurements for assets and liabilities which are required to be recorded at fair value, we consider the principal or most advantageous market in which we would transact and the market-based risk measurements or assumptions that market participants would use in pricing the asset or liability, such as inherent risk, transfer restrictions and credit risk. We apply the following fair value hierarchy, which ranks the quality and reliability of the information used to determine fair values:

- Level 1* Quoted prices in active markets for identical assets or liabilities.
- Level 2* Inputs other than Level 1 prices, such as quoted prices for similar assets or liabilities, quoted prices of identical assets or liabilities in markets with insufficient volume or infrequent transactions (less active markets), or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.
- Level 3* Unobservable inputs to the valuation methodology that are significant to the measurement of the fair value of the assets or liabilities.

Our cash equivalents and marketable securities are generally classified within Level 1 or Level 2 of the fair value hierarchy because they are valued using quoted market prices, broker or dealer quotations, or alternative pricing sources with reasonable levels of price transparency. The types of instruments valued based on quoted market prices in active markets include most marketable securities and money market securities. Such instruments are generally classified within Level 1 of the fair value hierarchy.

During the third quarter of fiscal year 2013, we made a determination to sell our \$7.5 million equity interest in ClariPhy Communications, Inc., a privately-held company. As a result of negotiations with third parties to sell the investment, we determined that the value of the investment was \$3.9 million. Accordingly, we recorded a \$3.6 million impairment charge during the three and nine month periods ended March 30, 2013. As of March 30, 2013, the investment is classified within Level 2 of the fair value hierarchy and recorded within short-term investments in the accompanying condensed consolidated balance sheet.

We have a defined benefit pension plan in Switzerland whose assets are classified within Level 1 of the fair value hierarchy for plan assets of cash, equity investments and fixed income investments, and Level 3 of the fair value hierarchy for plan assets of real estate and alternative investments. These pension plan assets are not reflected in the accompanying condensed consolidated balance sheets, and are thus not included in the following table.

The contingent obligation related to the make-whole premium on our convertible notes was valued using a valuation model which estimates the value based on the probability and timing of conversion. We have classified the contingent obligation within Level 3 of the fair value hierarchy.



**Table of Contents****Assets and Liabilities Measured at Fair Value on a Recurring Basis**

Assets and liabilities measured at fair value on a recurring basis are shown in the table below by their corresponding balance sheet caption and consisted of the following types of instruments at March 30, 2013:

	Fair Value Measurement at Reporting Date Using			
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total
	(Thousands)			
Assets:				
Cash and cash equivalents:				
Money market funds	\$ 2,001	\$	\$	\$ 2,001
Short-term investments:				
Equity securities	117	3,862		3,979
Total assets measured at fair value	\$ 2,118	\$ 3,862	\$	\$ 5,980
Liabilities:				
Other non-current liabilities:				
Contingent obligation for make-whole premium	\$	\$	\$ 99	\$ 99
Total liabilities measured at fair value	\$	\$	\$ 99	\$ 99

The following table provides details regarding the changes in assets and liabilities classified within Level 3 from June 30, 2012 to March 30, 2013:

	Other non-current liabilities (Thousands)
<b>Balance at June 30, 2012</b>	\$
Initial calculation for the contingent obligation for make-whole premium	136
Current period adjustments to the contingent obligation for make-whole premium	(37)
<b>Balance at March 30, 2013</b>	\$ 99

**NOTE 5. BUSINESS COMBINATIONS AND ASSET DISPOSITIONS*****Sale of Thin Film Filter Business and Interleaver Product Line***

On November 19, 2012, we entered into an asset purchase agreement with II-VI Incorporated, Photop Technologies, Inc. and Photop Koncent, Inc. (FuZhou), both wholly owned subsidiaries of II-VI Incorporated, pursuant to which we sold substantially all of the assets of our thin film filter business and our interleaver product line. The transactions closed on December 3, 2012.

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The total purchase price under the asset purchase agreement is \$27.0 million in cash. In the second quarter of fiscal 2013, we received \$26.0 million in cash proceeds, while the remaining \$1.0 million is being held in escrow until December 31, 2013 to satisfy any indemnification claims related to these transactions. Under the asset purchase agreement, we made certain customary representations and warranties regarding our thin film filter business and interleaver product line, and we are subject to customary indemnification obligations related to pre-closing liabilities and breaches of representations, warranties and covenants. Also pursuant to the Purchase Agreement, we have agreed not to compete in the thin film filter or interleaver business for a period of five years, subject to certain limitations and exceptions.

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In connection with these transactions, we transferred \$0.9 million of property, plant and equipment at net book value, \$0.7 million of inventory and \$0.2 million of other net assets. We also incurred approximately \$0.4 million in legal fees, commissions and other administrative costs related to the transactions. We recognized a gain of \$24.8 million under the asset purchase agreement within restructuring, acquisition and related costs in the condensed consolidated statements of operations during the nine months ended March 30, 2013.

### Acquisition of Opnext

On March 26, 2012, we entered into an Agreement and Plan of Merger and Reorganization, by and among Opnext, Tahoe Acquisition Sub, Inc., a newly formed wholly-owned subsidiary of Oclaro (Merger Sub), and Oclaro, pursuant to which we acquired Opnext through a merger of Merger Sub with and into Opnext. On July 23, 2012, we consummated the acquisition following approval by the stockholders of both companies.

Our primary reasons for the acquisition of Opnext were to create an industry leader in telecom optical components and to strengthen the combined position of the companies in datacom optical components. The acquisition is also consistent with our strategy of extending optical communications technology into industrial and consumer markets, and is expected to create the opportunity for significant cost savings in the combined company.

As a result of the acquisition, we converted each issued and outstanding share of Opnext common stock into the right to receive 0.42 of a share of our common stock, par value \$0.01 per share (and cash in lieu of fractional shares). In addition, each Opnext stock option that was outstanding and unexercised immediately prior to the acquisition was converted into an option to purchase our common stock (adjusted to give effect to the exchange ratio); and each Opnext stock appreciation right that was outstanding and that remained unsettled immediately prior to the acquisition was converted into either a stock appreciation right with respect to our common stock (adjusted to give effect to the exchange ratio) or a stock appreciation right subject to cash settlement and remained subject to the same terms and conditions of the Opnext equity plan and the applicable stock appreciation right agreement as in effect immediately prior to the acquisition.

In connection with the acquisition: (i) 91,467,739 shares of Opnext common stock were converted into the right to receive 38,416,355 shares of our common stock; (ii) outstanding options to purchase 10,119,340 shares of Opnext common stock were converted into options to purchase 4,250,011 shares of our common stock; and (iii) stock appreciation rights (SARs) with respect to 412,123 shares of Opnext common stock were converted into SARs with respect to 172,970 shares of our common stock.

Immediately following the effective time of the merger, Oclaro stockholders immediately prior to the merger owned approximately 57.3 percent and Opnext's stockholders owned approximately 42.7 percent of the combined company. The combination is intended to qualify as a tax-free reorganization for federal income tax purposes. We accounted for this acquisition under the purchase method of accounting. The estimated fair value of assets acquired and liabilities assumed and the results of operations of Opnext from the closing date of the acquisition, July 23, 2012, are included in our condensed consolidated financial statements at March 30, 2013 and for the three and nine months then ended.

For accounting purposes, the fair value of the consideration paid to Opnext stockholders in the acquisition was \$89.8 million; which includes the issuance of \$88.7 million in common stock, based on a price of \$2.31 per share of our common stock, which was the closing market price of our common stock on the day the acquisition was consummated; and \$1.1 million for the assumption of vested stock options and SARs to purchase our common stock.

	<b>Total Consideration (Thousands)</b>
Common shares issued to Opnext stockholders	\$ 88,742
Estimated fair value of vested stock options assumed	1,095
Estimated fair value of vested stock appreciation rights assumed	5
 Total consideration	 \$ 89,842

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The total consideration given to former stockholders of Opnext has been allocated to the assets acquired and liabilities assumed based on preliminary estimates of their estimated fair values as of the date of the acquisition. Because of the complexities involved with performing our valuation, we have recorded the tangible and intangible assets acquired and liabilities assumed based upon their preliminary fair values as of July 23, 2012. The fair values were based upon management estimates, and our estimates and assumptions are subject to change within the measurement period (up to one year from the acquisition date). We expect to continue to obtain information to assist us in determining the fair values of the assets acquired and liabilities assumed at the acquisition date during our fourth quarter of fiscal 2013.

Our preliminary purchase price allocation is as follows:

	<b>Preliminary Purchase Price Allocation (Thousands)</b>
Cash and cash equivalents	\$ 36,123
Restricted cash	20,000
Accounts receivable	55,572
Inventories	68,011
Prepaid expenses and other current assets	14,432
Property and equipment	51,107
Intangible assets	28,000
Other non-current assets	212
Accounts payable	(68,503)
Accrued expenses and other current liabilities	(27,081)
Note payable	(19,133)
Capital lease obligations	(29,990)
Deferred tax liabilities	(2,131)
Other non-current liabilities	(8,912)
 Preliminary estimate of the fair value of assets acquired and liabilities assumed	 117,707
Gain on bargain purchase	(27,865)
 Total purchase price	 \$ 89,842

The preliminary fair value of raw materials inventories were based on historical cost on a first-in first-out basis, reduced to reflect amounts related to inventory we believe will prove to be unsalable. Products may be unsalable because they are technically obsolete due to substitute products, specification changes or excess inventory relative to customer forecasts. Work in process, finished goods and spare parts were preliminarily valued using the comparative sales method, which estimates the expected sales price of the subject inventory, reduced for all costs expected to be incurred in its completion (for work in process), disposition and a profit on those efforts. Work in process, finished goods and spare parts were also reduced to reflect amounts related to inventory we believe will prove to be unsalable.

During the first and second quarter of fiscal 2013, the preliminary fair value of property and equipment was determined using management estimates based on currently available information and a high-level review of similar historical transactions completed by us during the previous three fiscal years. In the third quarter of fiscal year 2013, we adjusted our initial estimate by reducing the fair value of property and equipment by \$11.6 million based on preliminary valuation results. We recorded an \$11.6 million reduction in our gain on bargain purchase as of the acquisition date and adjusted depreciation expense for all interim periods to reflect the revised fair value estimate as of the acquisition date.

The preliminary fair value of intangible assets was based on internal assessments using the income approach, which requires an estimate or forecast of all the expected future cash flows through the application of the multi-period excess earnings method, relief-from-royalty method or other acceptable methods. We have initially identified the following significant intangible assets: \$13.7 million of developed technology with an estimated weighted average useful life of 6 years, \$1.8 million of contract backlog with an estimated weighted average useful life of 1 year, \$7.3 million of customer relationships with an estimated weighted average useful life of 6 years, \$4.8 million of trademarks and other with an estimated weighted average useful life of 4 years, and \$0.4 million of in-process research and development. These preliminary estimates of fair value and weighted-average useful life will likely be different from our final purchase price allocation, and the difference could have a material impact on the accompanying condensed consolidated financial statements.



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Any excess of the fair value of assets acquired and liabilities assumed over the aggregate consideration given for such acquisition results in a gain on bargain purchase. In the first quarter of fiscal year 2013, we initially recorded a gain on bargain purchase of \$39.5 million in connection with the acquisition of Opnext, which was subsequently adjusted to \$27.9 million based on updated fair value information. Our preliminary estimate of gain on bargain purchase is subject to change during the measurement period as we finalize our purchase price allocation based on finalization of the fair value estimates of assets acquired and liabilities assumed.

The bargain purchase gain of \$27.9 million results from the difference between the fair value of consideration given and our preliminary estimate of the fair value of assets acquired and liabilities assumed. The consideration given for Opnext consisted of a fixed number of our shares for each Opnext Share (0.42 for one), which was agreed upon on March 26, 2012. On that date, the closing price of our common stock was \$4.66. At the consummation of the merger on July 23, 2012, the closing price of our common stock was \$2.31. This share price, multiplied by the fixed number of our shares outstanding at the merger, and including the fair value of vested stock awards assumed by us, resulted in the fair value of consideration given being \$89.8 million, less than the preliminary estimate of the fair market value of the net assets acquired and liabilities assumed of \$117.7 million.

We also recorded \$2.6 million in acquisition-related costs during the nine months ended March 30, 2013, which are included in restructuring, acquisition and related costs in the condensed consolidated statement of operations. The acquisition-related costs include legal fees, banker fees, consultation fees, travel expenses and other miscellaneous direct and incremental administrative expenses associated with the acquisition.

Upon the close of the acquisition, the combined company implemented significant workforce restructuring actions. Among other things, we combined our global sales, finance, legal and human resources operations. We also realigned our global operations and business units under a single management structure. Our newly combined global organizations provide services for both the pre-acquisition Oclaro and former Opnext products. We have also reduced redundant product offerings by eliminating selected products from each predecessor company and transitioned existing customers for such products to the other company's current offering. In addition, we have merged our research and development efforts along product families, so many of our new product introductions going forward will benefit from both Oclaro and Opnext technology. For these reasons, we believe it would be impracticable to allocate revenues going forward to one predecessor entity or the other and to separately disclose revenues and earnings of Opnext since the acquisition date.

The following unaudited pro forma consolidated results of operations have been prepared as if the merger with Opnext had occurred as of July 3, 2011, the first day of our fiscal year 2012:

	Three Months Ended		Nine Months Ended	
	March 30, 2013	March 31, 2012	March 30, 2013	March 31, 2012
	(Thousands, except per share amounts)			
Revenues	\$ 141,642	\$ 155,630	\$ 461,213	\$ 486,640
Loss from continuing operations	\$ (28,939)	\$ (37,634)	\$ (91,000)	\$ (140,497)
Net loss	\$ (41,541)	\$ (39,656)	\$ (104,638)	\$ (143,621)
Net loss per share Basic	\$ (0.46)	\$ (0.44)	\$ (1.16)	\$ (1.62)
Net loss per share Diluted	\$ (0.46)	\$ (0.44)	\$ (1.16)	\$ (1.62)
Shares used in computing net loss per share Basic	90,263	89,230	89,877	88,667
Shares used in computing net loss per share Diluted	90,263	89,230	89,877	88,667

We made certain adjustments to the combined results of operations in arriving at these unaudited pro forma financial results; namely we eliminated revenues and cost of revenues related to product sales between the companies; eliminated depreciation of property and equipment based on historical acquisition cost and reflected depreciation based on the preliminary estimated fair values and useful lives of property and equipment acquired; reversed amortization of intangible assets based on the historical amortization related to Opnext's existing intangible assets and reflected amortization of identified intangible assets based on the preliminary estimated fair values and useful lives of identified intangible assets recorded as a result of the acquisition; and eliminated acquisition-related transaction costs and our preliminary estimate of the bargain purchase gain, which were directly attributable to the merger but which are not expected to have a continuing impact on the combined entity's results. This unaudited pro forma financial information is presented for informational purposes only and is not necessarily indicative of the results of operations that actually would have been achieved had the acquisition been consummated as of that time, nor is it intended to be a projection of future results.

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In December 2011, we entered into an asset sale agreement to sell certain assets related to a legacy product, including inventory, equipment and intangibles, in exchange for \$3.9 million in initial consideration plus potential earnout consideration, based on the purchaser's revenues from the legacy product over a 15 month period following the closing date. Over the course of the second and third quarters of fiscal year 2012, we received \$2.9 million in cash proceeds related to this initial consideration, with the remaining \$1.0 million being received during the fourth quarter of fiscal year 2012.

In the second fiscal quarter of 2012, we recorded a deferred gain of \$1.3 million related to the sale of these assets and classified this amount in accrued expenses and other liabilities in our condensed consolidated balance sheet. In the third fiscal quarter of 2012, we completed the asset transfer and recognized a gain of \$1.9 million within restructuring, acquisition and related costs in the condensed consolidated statements of operations. Earnout consideration, if any, will be recognized in the period it is reported to us as due, provided we believe cash collections are reasonably assured.

**Acquisition of Mintera**

In July 2010, we acquired Mintera Corporation (Mintera). This acquisition is more fully discussed in Note 3, *Business Combinations*, to our consolidated financial statements included in our 2012 Annual Report on Form 10-K. Under the terms of this acquisition, we agreed to pay certain revenue-based consideration, whereby former security holders of Mintera were entitled to receive earnouts up to \$20.0 million, determined based on revenue from Mintera products following the acquisition. In the first quarter of fiscal year 2013, we settled the remaining earnout obligations of \$8.6 million in cash.

**NOTE 6. INTANGIBLE ASSETS**

In connection with our acquisition of Opnext on July 23, 2012, we recorded \$28.0 million in intangible assets as our preliminary estimate of the fair value of acquired intangible assets. The intangible assets acquired from Opnext consist of \$13.7 million of developed technology with an estimated weighted average useful life of 6 years, \$1.8 million of contract backlog with an estimated weighted average useful life of 1 year, \$7.3 million of customer relationships with an estimated weighted average useful life of 6 years, \$4.8 million of trademarks and other with an estimated weighted average useful life of 4 years, and \$0.4 million of in-process research and development. These preliminary estimates of fair value and weighted-average useful lives will likely be different from our final purchase price allocation.

The following table summarizes the activity related to our intangible assets for the nine months ended March 30, 2013:

	Core and Current Technology	Development and Supply Agreements	Customer Relationships	Patent Portfolio (Thousands)	Other Intangibles	Amortization	Total
<b>Balance at June 30, 2012</b>	\$ 10,925	\$ 6,520	\$ 3,200	\$ 2,910	\$ 1,100	\$ (8,010)	\$ 16,645
Additions	13,700		7,300		7,000		28,000
Amortization						(6,828)	(6,828)
Impairment	(864)						(864)
Translations and adjustments	(9)	(27)					(36)
<b>Balance at March 30, 2013</b>	\$ 23,752	\$ 6,493	\$ 10,500	\$ 2,910	\$ 8,100	\$ (14,838)	\$ 36,917

During the first quarter of fiscal year 2013, we determined that a portion of the technology we acquired in connection with our acquisition of Mintera in July 2010 is now considered redundant, following the acquisition of Opnext and its product lines. We recorded \$0.9 million for the impairment loss related to these intangibles in restructuring, acquisition and related costs in our condensed consolidated statements of operations for the nine months ended March 30, 2013.





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### **NOTE 7. CREDIT LINE AND NOTES**

#### ***Wells Fargo Credit Line***

On August 2, 2006, Oclaro, Inc., as the Parent, along with Oclaro Technology Limited, Oclaro Photonics, Inc. and Oclaro Technology, Inc., each a wholly-owned subsidiary, entered into a credit agreement, or the Original Credit Agreement, with Wells Fargo Capital Finance, Inc. (Wells Fargo) and certain other lenders.

On November 2, 2012, Oclaro Technology Limited as Borrower, and the Parent entered into a Second Amended and Restated Credit Agreement with Wells Fargo and the other lenders regarding the senior secured revolving credit facility, increasing the facility size to \$50 million and extending the term thereof to November 2, 2017.

On January 23, 2013, Silicon Valley Bank (SVB) and Wells Fargo (Agent) entered into a Joinder Agreement (the Joinder Agreement) pursuant to the Second Amended and Restated Credit Agreement among Oclaro, Inc., a Delaware corporation (Parent), Oclaro Technology Limited, a company incorporated under the laws of England and Wales (Borrower), each lender party thereto (the Lenders) and the Agent, as administrative agent for the Lenders. Pursuant to the Joinder Agreement, SVB agreed to become an additional Lender under the Second Amended and Restated Credit Agreement, and the Lenders agreed to increase the revolving credit facility under the Credit Agreement from \$50 million to \$80 million.

Also on January 23, 2013, Parent, Borrower, the Lenders and the Agent entered into Amendment Number One to the Credit Agreement and the associated security agreements (the Amendment), pursuant to which the parties agreed that (i) the senior secured second lien notes due 2018 issued by Oclaro Luxembourg S.A. in the original principal amount of \$25.0 million shall be applied against the maximum dollar limit of senior unsecured convertible notes that Parent may issue without the consent of Agent, and (ii) the cash balances of Opnext, Pine Photonics Communications, Inc., and Opnext Subsystems Inc. would be subject to a required sweep to the Agent's account upon the occurrence of certain triggering events.

On May 6, 2013, Parent, Borrower, the Lenders, the Agent and PECM Strategic Funding LP and Providence TMT Debt Opportunity Fund II LP (the Term Lenders) entered into Amendment Number Two to the Credit Agreement and the associated guaranties and security agreements (Amendment Number Two). See Note 18, *Subsequent Events*, for a description of Amendment Number Two.

The following description of the Credit Agreement represents the terms of the senior secured revolving credit facility as of March 30, 2013, prior to Borrower and Parent entering into Amendment Number Two.

Under the Credit Agreement, advances are available based on up to 85 percent of eligible accounts receivable, as defined in the Credit Agreement. The Borrower has the option to increase the size of the revolving credit facility to up to \$100 million by adding lenders willing to provide such increase. The obligations of the Borrower under the Credit Agreement are guaranteed by the Parent and all significant subsidiaries of the Parent and the Borrower (collectively, the Guarantors), and are secured, pursuant to two security agreements by substantially all of the assets of the Borrower and the Guarantors, including a pledge of the capital stock holdings of the Borrower and certain Guarantors in their direct subsidiaries. Borrowings made under the Credit Agreement bear interest at a rate based on either the London Interbank Offered Rate plus 2.50 percentage points or the bank's prime rate plus 1.25 percentage points. Commencing March 31, 2013, the interest rate margins may decrease or increase by 0.25 percentage points based on the average quarterly availability under the revolving credit facility. In the absence of an event of default, any amounts outstanding under the Credit Agreement may be repaid and re-borrowed at any time until maturity, which is November 2, 2017.

The obligations of the Borrower under the Credit Agreement may be accelerated upon the occurrence of an event of default under the Credit Agreement, which includes customary events of default, including payment defaults, defaults in the performance of affirmative and negative covenants, the inaccuracy of representations or warranties, a cross-default related to indebtedness in an aggregate amount of \$2.0 million or more, bankruptcy and insolvency related defaults, defaults relating to such matters as the Employee Retirement Income Security Act and certain judgments in excess of \$2.0 million and a change of control default. The Credit Agreement contains negative covenants applicable to the Parent, the Borrower and their subsidiaries, including a financial covenant that, on a consolidated basis, requires the Parent to maintain a minimum fixed charge coverage ratio of no less than 1.10 to 1.00, if the Parent and its subsidiaries have not maintained qualified cash of at least \$15 million and adjusted excess availability, as such terms are defined in the Credit Agreement. The Credit Agreement also contains restrictions on liens, certain investments, indebtedness, fundamental changes to the Borrower's business, certain dispositions of property, making certain restricted payments (including restrictions on dividends and stock repurchases), entering into new lines of business and transactions with affiliates.

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In connection with the Credit Agreement, the Company paid an arrangement fee of \$150,000, a closing fee of \$275,000 and agreed to pay a monthly servicing fee of \$4,000 and an unused line fee equal to 0.375 percentage points per annum, payable monthly on the unused amount of revolving credit commitments. To the extent there are letters of credit outstanding under the Credit Agreement, the Borrower is obligated to pay the administrative agent a letter of credit fee at a rate equal to 3.3 percentage points per annum. Commencing March 31, 2013, the letter of credit fee may decrease or increase by 0.25 percentage points based on the average quarterly availability under the revolving credit facility.

During the three and nine months ended March 30, 2013, we repaid \$0.7 million under the Credit Agreement. At March 30, 2013, there was \$40.0 million outstanding under the Credit Agreement at an average interest rate of 3.0 percent per annum. At June 30, 2012, there was \$25.5 million outstanding under the Credit Agreement at an average interest rate of 4.75 percent per annum. At March 30, 2013 and June 30, 2012, there were \$30,000 and \$0.1 million, respectively, in outstanding standby letters of credit secured under the Credit Agreement. These letters of credit expire at various intervals through April 2014.

The obligations of the Borrower under the Credit Agreement are guaranteed by the Parent and all significant subsidiaries of the Parent and the Borrower (collectively, the Guarantors), and are secured, pursuant to two security agreements by substantially all of the assets of the Borrower and the Guarantors, including a pledge of the capital stock holdings of the Borrower and certain Guarantors in their direct subsidiaries.

In connection with the Joinder Agreement, Parent paid SVB a lender fee of \$150,000.

### ***7.50 % Exchangeable Senior Secured Second Lien Notes (Convertible Notes)***

On December 14, 2012, we and our indirect, wholly owned subsidiary, Oclaro Luxembourg S.A., closed the private placement of \$25.0 million aggregate principal amount 7.50% Exchangeable Senior Secured Second Lien Notes due 2018 (Convertible Notes). The sale of the Convertible Notes resulted in net proceeds of approximately \$22.8 million. The private placement was completed pursuant to a purchase agreement, dated December 14, 2012 entered into by us, certain of our domestic and foreign subsidiaries (the Guarantors) and Morgan Stanley & Co. LLC.

The Convertible Notes are governed by an Indenture, entered into by us and the Guarantors with Wells Fargo Bank, National Association, as trustee and second lien collateral agent (the Trustee). The Indenture contains affirmative and negative covenants that, among other things, limit the ability of us and the Guarantors to incur, assume or guarantee additional indebtedness; make restricted payments including, without limitation, paying dividends, repurchasing capital stock and redeeming debt that is junior in right of payment to the Convertible Notes; create liens; sell or otherwise dispose of assets, including capital stock of subsidiaries; and enter into mergers and consolidations. The Indenture also contains customary events of default. Upon the occurrence of certain events of default, the Trustee or the holders of the Convertible Notes may declare all outstanding Convertible Notes to be due and payable immediately. The Convertible Notes are unconditionally guaranteed, jointly and severally, on a senior secured basis by us and all of the Guarantors.

On or after December 15, 2013, in the event that the last reported sale price of our common stock for 20 or more trading days (whether or not consecutive) in a period of 30 consecutive trading days ending within five trading days immediately prior to the date that we receive a notice of exchange exceeds the exchange price in effect on each such trading day, we will, in addition to delivering shares upon exchange by the holder of Convertible Notes, together with cash in lieu of fractional shares, make a make-whole premium payment in cash equal to the sum of the present value of the remaining scheduled payments of interest on the Convertible Notes to be exchanged through the maturity date computed using a discount rate equal to 0.50%. Any holder that exchanges its Convertible Notes in connection with a fundamental change, as defined in the Indenture, will not receive the make-whole premium but will instead receive the additional shares set forth in the Indenture. Any holder that exchanges its Convertible Notes after such holder's Convertible Notes have been called for redemption by us will, in addition to receiving shares of common stock deliverable upon such exchange and cash in lieu of fractional shares, receive a payment (the redemption exchange make-whole payment) in cash equal to the sum of the remaining scheduled payments of interest that would have been made on the Convertible Notes to be exchanged had such Convertible Notes remained outstanding from the applicable exchange date to the maturity date. If the redemption exchange make-whole payment is payable upon exchange of a holder's Convertible Notes, then such holder will not receive the make-whole premium payment described above.

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Prior to December 19, 2015, we may not redeem the Convertible Notes other than in connection with certain changes in tax law of a relevant taxable jurisdiction that results in additional amounts (as defined herein) becoming payable with respect to deliveries or payments on the Convertible Notes.

On or after December 19, 2015, we may redeem for cash all or part of the Convertible Notes if the last reported sale price per share of our common stock has been at least 150 percent of the exchange price then in effect for at least 20 trading days (whether or not consecutive) during any 30 consecutive trading-day period ending within five trading days prior to the date on which we provide notice of redemption. The redemption price will equal (i) 100 percent of the principal amount of the Convertible Notes being redeemed, plus (ii) accrued and unpaid interest, including additional interest, if any, to, but excluding, the redemption date plus (iii) the sum of the remaining scheduled payments of interest that would have been made on the Convertible Notes to be redeemed had such Convertible Notes remained outstanding from the redemption date to the maturity date (excluding interest accrued to, but excluding, the redemption date that is otherwise paid pursuant to the immediately preceding clause (ii)).

Upon the occurrence of a fundamental change, subject to certain conditions, each holder of the Convertible Notes will have the option to require that we purchase all or a portion of such holder's Convertible Notes in cash at a purchase price equal to 100 percent of the principal amount of the Convertible Notes to be purchased plus any accrued and unpaid interest, including additional interest, if any.

In connection with the private placement of the Convertible Notes, on December 14, 2012, we and the Guarantors entered into certain security agreements with the Trustee in order to secure their obligations under the Indenture. Pursuant to the security agreements, the Convertible Notes and related guarantees are secured by second-priority liens on all the tangible and intangible assets of ours and the Guarantors.

We maintain banking relationships in the ordinary course of business with the Trustee and its affiliates. An affiliate of the Trustee, Wells Fargo Capital Finance, Inc., is the lender under our senior secured revolving credit facility and is the first lien collateral agent under an intercreditor agreement entered into with the Trustee in connection with the issuance of the Convertible Notes.

In connection with the issuance of the Convertible Notes, our contingent obligation to make a make-whole premium payment in the event of an early conversion by the holders of the Convertible Notes is considered an embedded derivative. As of December 14, 2012, the date of the debt issuance, and as of March 30, 2013, the fair value of these contingent obligations is estimated at \$0.1 million, and recorded within other non-current liabilities in the condensed consolidated balance sheet. The estimated fair value of the make-whole premium was determined by using a valuation model to determine the probability and timing of a conversion.

We incurred approximately \$1.3 million in debt discount and \$0.9 million in issuance costs. The debt discount is recorded in convertible notes payable and the issuance costs are recorded within other non-current assets.

The Convertible Notes will mature on June 15, 2018. Interest on the Convertible Notes is payable semi-annually in arrears on June 15 and December 15 of each year, beginning on June 15, 2013. During the three and nine months ended March 30, 2013, we recorded \$0.5 million and \$0.6 million, respectively, in interest expense related to these Convertible Notes.

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The following table sets forth balance sheet information related to the Convertible Notes at March 30, 2013:

	March 30, 2013	June 30, 2012
	(Thousands)	
Principal value of the liability component	\$ 25,000	\$
Unamortized value of the debt discount	(1,202)	
Make-whole premium	(130)	
Net carrying value of the liability component	\$ 23,668	\$

**Sumitomo Note**

In connection with the acquisition of Opnext, we assumed a 1.5 billion Japanese yen note payable to The Sumitomo Trust Bank (Sumitomo). The note is due monthly unless renewed by Sumitomo. As of March 30, 2013, the outstanding loan balance was \$15.6 million, based on the exchange rate on March 30, 2013. Interest is paid monthly at the Tokyo Interbank Offered Rate plus a premium, which for our first three quarters of fiscal year 2013 was 1.7 percent per annum. Interest expense for the three and nine months ended March 30, 2013 was \$0.1 million and \$0.2 million, respectively.

As of March 30, 2013, we have \$15.6 million in restricted cash in our condensed consolidated balance sheet securing our note payable to Sumitomo.

**NOTE 8. FLOOD-RELATED (INCOME) EXPENSE, NET**

In October 2011, certain areas in Thailand suffered major flooding as a result of monsoons. This flooding had a material impact on our business and results of operations. Our primary contract manufacturer, Fabrinet, suspended operations at two factories located in Chokchai, Thailand and Pinehurst, Thailand. The Chokchai factory suffered extensive flood damage and became inaccessible due to high water levels inside and surrounding the manufacturing facility. As a result of this flooding, we experienced a significant decline in product sales due to our inability or limited ability to manufacture certain products and we incurred significant damage to our inventory and property and equipment located at the Chokchai facility.

During the three and nine months ended March 30, 2013, we recorded net flood-related benefits of \$11.5 million and \$10.6 million, respectively, related to advance payments from our insurers, offset in part by professional fees and related expenses incurred in connection with our recovery efforts. During the quarter ended March 30, 2013, we received an \$11.8 million advance payment from one of our insurers relating to losses we incurred due to the flooding in Thailand. This payment is a general advance from our insurer against all Thailand flood-related claims and was not specifically identified as reimbursement for any particular loss or claim. As there were no contingencies associated with this payment, we recorded this advance payment within flood-related (income) expense, net in our condensed consolidated statements of operations for the three and nine months ended March 30, 2013.

During the three months ended March 31, 2012, we recorded flood-related charges of \$2.5 million related to personnel costs, professional fees and related expenses incurred in connection with our recovery efforts, along with \$0.6 million in impairment charges related to the write-off of the net book value of property and equipment based on estimates of the damage caused by the flooding. During the nine months ended March 31, 2012, we recorded flood-related charges of \$4.3 million related to personnel costs, professional fees and related expenses incurred in connection with our recovery efforts, along with \$4.2 million in impairment charges related to the write-off of the net book value of damaged inventory and \$3.7 million related to the write-off of the net book value of property and equipment based on estimates of the damage caused by the flooding. These impairment charges are recorded within the operating expense caption flood-related (income) expense, net, in our condensed consolidated statement of operations for the three and nine months ended March 31, 2012.

In February 2012, we received a \$6.4 million advance payment from one of our insurers relating to losses we incurred due to the flooding in Thailand. As there were no contingencies associated with this payment, we recorded this advance payment within flood-related (income) expense, net in our condensed consolidated statements of operations for the three and nine months ended March 31, 2012.



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While we maintain both property and business interruption insurance coverage, there can be no assurance as to the amount or timing of future insurance recoveries. Insurance recoveries related to impairment losses previously recorded and other recoverable expenses will be recognized to the extent of the related loss or expense in the period that recoveries become probable and realizable. Insurance recoveries under business interruption coverage and insurance recovery gains in excess of amounts previously written-off related to impaired inventory and equipment or in excess of other recoverable expenses previously recognized will be recognized when they become realizable and all contingencies have been resolved. The evaluation of insurance recoveries requires estimates and judgments about future results which affect reported amounts and certain disclosures. Actual results could differ from those estimates. Insurance recoveries we receive in future periods will be recorded net of flood-related (income) expense, net, in the condensed consolidated statement of operations. As of March 30, 2013, we have not recorded any estimated amounts relating to potential future insurance recoveries in the condensed consolidated statement of operations.

The following table presents the components of flood-related (income) expense, net, for the dates indicated:

	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>March 30, 2013</b>	<b>March 31, 2012</b>	<b>March 30, 2013</b>	<b>March 31, 2012</b>
	(Thousands)			
Write-off of net book value of damaged inventory	\$	\$	\$	\$ 4,246
Write-off of net book value of damaged property and equipment		624		3,659
Personnel-related costs, professional fees and related expenses	249	2,474	1,154	4,281
Advance payment from insurer	(11,797)	(6,365)	(11,797)	(6,365)
	\$ (11,548)	\$ (3,267)	\$ (10,643)	\$ 5,821

**NOTE 9. POST-RETIREMENT BENEFITS*****Switzerland Defined Benefit Plan***

We have a pension plan covering employees of our Swiss subsidiary (the Swiss Plan). Net periodic pension costs associated with our Swiss Plan for the three and nine months ended March 30, 2013 and March 31, 2012 included the following:

	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>March 30, 2013</b>	<b>March 31, 2012</b>	<b>March 30, 2013</b>	<b>March 31, 2012</b>
	(Thousands)			
Service cost	\$ 816	\$ 629	\$ 2,455	\$ 1,870
Interest cost	185	216	556	641
Expected return on plan assets	(308)	(282)	(928)	(838)
Net amortization	93		282	
Net periodic pension costs	\$ 786	\$ 563	\$ 2,365	\$ 1,673

During the three and nine months ended March 30, 2013, we amortized \$0.1 million and \$0.3 million from accumulated other comprehensive income into net periodic pension cost. We intend to amortize an additional \$4.7 million over the remaining average service period of 12.8 years.

During the three and nine months ended March 30, 2013, we contributed \$0.5 million and \$1.7 million, respectively, to our Swiss Plan. During the three and nine months ended March 31, 2012, we contributed \$0.3 million and \$0.9 million, respectively, to our Swiss Plan.

We currently anticipate contributing an additional \$0.7 million to this pension plan during the remainder of fiscal year 2013.



**Table of Contents*****Japan Defined Contribution and Benefit Plan***

In connection with our acquisition of Opnext, we assumed a defined contribution plan and a defined benefit plan that provides retirement benefits to our employees in Japan.

Under the defined contribution plan, contributions are provided based on grade level and totaled \$0.2 million and \$0.7 million for the three and nine months ended March 30, 2013, respectively. Employees can elect to receive the benefit as additional salary or contribute the benefit to the plan on a tax-deferred basis.

Under the defined benefit plan in Japan (the Japan Plan), we calculate benefits based on an employee's individual grade level and years of service. Employees are entitled to a lump sum benefit upon retirement or upon certain instances of termination. As of March 30, 2013, there were no plan assets. Net periodic pension costs for the Japan Plan for the three and nine months ended March 30, 2013 included the following:

	<b>Three Months Ended March 30, 2013</b>	<b>Nine Months Ended March 30, 2013</b>
	(Thousands)	
Service cost	\$ 251	\$ 827
Interest cost	32	105
Net amortization	17	58
Net periodic pension costs	\$ 300	\$ 990

In connection with the Japan Plan, we have \$0.3 million in accrued expenses and other liabilities and \$7.5 million in other non-current liabilities in our condensed consolidated balance sheet as of March 30, 2013, to account for the projected benefit obligations.

We made benefit payments of \$0.1 million under the Japan Plan during the nine months ended March 30, 2013.

**NOTE 10. COMMITMENTS AND CONTINGENCIES*****Loss Contingencies***

We are involved in various lawsuits, claims, and proceedings that arise in the ordinary course of business. We record a loss provision when we believe it is both probable that a liability has been incurred and the amount can be reasonably estimated.

***Guarantees***

We indemnify our directors and certain employees as permitted by law, and have entered into indemnification agreements with our directors and executive officers. We have not recorded a liability associated with these indemnification arrangements, as we historically have not incurred any material costs associated with such indemnification obligations. Costs associated with such indemnification obligations may be mitigated by insurance coverage that we maintain, however, such insurance may not cover any, or may cover only a portion of, the amounts we may be required to pay. In addition, we may not be able to maintain such insurance coverage in the future.

We also have indemnification clauses in various contracts that we enter into in the normal course of business, such as indemnifications in favor of customers in respect of liabilities they may incur as a result of purchasing our products should such products infringe the intellectual property rights of a third party. We have not historically paid out any material amounts related to these indemnifications, therefore, no accrual has been made for these indemnifications.

***Warranty Accrual***



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We generally provide a warranty for our products for twelve months from the date of sale. We accrue for the estimated costs to provide warranty services at the time revenue is recognized. Our estimate of costs to service our warranty obligations is based on historical experience and expectation of future conditions. To the extent we experience increased warranty claim activity or increased costs associated with servicing those claims, our warranty costs would increase, resulting in a decrease in gross profit.

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The following table summarizes movements in the warranty accrual for the periods indicated:

	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>March 30, 2013</b>	<b>March 31, 2012</b>	<b>March 30, 2013</b>	<b>March 31, 2012</b>
	(Thousands)			
Warranty provision beginning of period	\$ 6,565	\$ 2,430	\$ 2,599	\$ 2,175
Warranties assumed in acquisitions			4,867	
Warranties issued	1,143	627	3,829	1,925
Warranties utilized or expired	(1,157)	(444)	(4,621)	(1,410)
Currency translation adjustment	(290)	66	(413)	(11)
Warranty provision end of period	\$ 6,261	\$ 2,679	\$ 6,261	\$ 2,679

**Capital Leases**

In connection with our acquisition of Opnext, we assumed certain capital leases with Hitachi Capital Corporation, a related party, for certain equipment. The following table shows the future minimum lease payments due under non-cancelable capital leases with Hitachi Capital Corporation:

<b>Fiscal Year Ending:</b>	<b>Capital Leases (Thousands)</b>
2013 (remaining)	\$ 1,698
2014	7,365
2015	6,803
2016	5,002
2017	1,347
Thereafter	119
Total minimum lease payments	22,335
Less amount representing interest	(1,440)
Present value of capitalized payments	20,895
Less: current portion	(10,218)
Long-term portion	\$ 10,677

**Litigation**

On December 21, 2012, Labyrinth Optical Technologies LLC filed a complaint against us in United States District Court for the Central District of California alleging that certain coherent transponder modules, coherent receivers and DQPSK transceivers sold by us infringe Labyrinth Optical U.S. patent Nos. 7,599,627 and 8,103,173. Labyrinth Optical is seeking damages and injunctive relief. A scheduling hearing is set for June 3, 2013. We are unable at this time to estimate the effects of this lawsuit on our financial position, results of operations or cash flows.

On May 19, 2011, Curtis and Charlotte Westley filed a purported class action complaint in the United States District Court for the Northern District of California, against us and certain of our officers and directors. The Court subsequently appointed the Connecticut Laborers Pension Fund (Pension Fund) as lead plaintiff for the putative class. On April 26, 2012, the Pension Fund filed a second amended complaint, captioned as Westley v. Oclaro, Inc., No. 11 Civ. 2448 EMC, allegedly on behalf of persons who purchased our common stock between May 6 and October 28, 2010, alleging that we and certain of our officers and directors issued materially false and misleading statements during this time period regarding our current business and financial condition, including projections for demand for our products, as well as our revenues,

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earnings, and gross margins, for the first quarter of fiscal year 2011 as well as the full fiscal year. The complaint alleges violations of section 10(b) of the Securities Exchange Act and Securities and Exchange Commission Rule 10b-5, as well as section 20(a) of the Securities Exchange Act. The complaint seeks damages and costs of an unspecified amount. On September 21, 2012, the Court dismissed the second amended complaint with leave to amend. After the Pension Fund moved for reconsideration, on January 10, 2013, the Court allowed plaintiffs to take discovery regarding statements made in May and June 2010. The Court also ordered defendants to move for summary judgment by June 13, 2013 on the issue of defendants' scienter with respect to statements made in May and June 2010, and further ordered that the motion be heard on July 18, 2013. On March 1, 2013 the Pension Fund filed a third amended complaint, attempting to cure pleading deficiencies with regard to statements allegedly made from July to October 2010. On April 1, 2013, defendants moved to dismiss the third amended complaint with respect to the statements made from July to October 2010. Oral argument on the motion to dismiss is scheduled for May 16, 2013. Discovery has commenced, and no trial has been scheduled in this action. We intend to defend this litigation vigorously. We are unable at this time to estimate the effects of this lawsuit on our financial position, results of operations or cash flows.

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On June 10, 2011, a purported shareholder, Stanley Moskal, filed a purported derivative action in the Superior Court for the State of California, County of Santa Clara, against us, as nominal defendant, and certain of our current and former officers and directors, as defendants. The case is styled Moskal v. Couder, No. 1:11 CV 202880 (Santa Clara County Super. Ct. filed June 10, 2011). Four other purported shareholders, Matteo Guindani, Jermaine Coney, Jefferson Braman and Toby Aguilar, separately filed substantially similar lawsuits in the United States District Court for the Northern District of California on June 27, June 28, July 7 and July 26, 2011, respectively. By Order dated September 14, 2011, the Guindani, Coney, and Braman actions were consolidated under In re Oclaro, Inc. Derivative Litigation, Lead Case No. 11 Civ. 3176 EMC. On October 5, 2011, the Aguilar action was voluntarily dismissed. Each remaining purported derivative complaint alleges that Oclaro has been, or will be, damaged by the actions alleged in the Westley complaint, and the litigation of the Westley action, and any damages or settlement paid in the Westley action. Each purported derivative complaint alleges counts for breaches of fiduciary duty, waste, and unjust enrichment. Each purported derivative complaint seeks damages and costs of an unspecified amount, as well as injunctive relief. By Order dated March 6, 2012, the parties in the Moskal action agreed that defendants shall not be required to respond to the original complaint. By Order dated February 27, 2013, the parties in the Moskal action agreed that plaintiff would serve an amended complaint no later than 30 days after the Court in the Westley action rules on defendants' motion to dismiss the third amended complaint in the Westley action and the stay of discovery would remain in effect until further order of the Court or agreement by the parties, provided, however, that they obtain discovery produced in the Westley Action. By Order dated March 12, 2013, the parties to In re Oclaro, Inc. Derivative Litigation agreed to stay all proceedings until such time as (a) the defendants file an answer to any complaint in the Westley action; or (b) the Westley action is dismissed in its entirety with prejudice, provided, however, that they obtain discovery produced in the Westley Action. No trial has been scheduled in any of these actions. We are unable at this time to estimate the effects of these lawsuits on our financial position, results of operations or cash flows.

On May 27, 2011, Opnext Japan filed a complaint against Furukawa in the Tokyo District Court alleging that certain laser diode modules sold by Furukawa infringe Opnext Japan's Japanese patent No. 3,887,174. Opnext Japan is seeking an injunction as well as damages in the amount of 100.0 million Japanese yen.

On August 5, 2011, Opnext Japan filed a complaint against Furukawa in the Tokyo District Court alleging that certain integratable tunable laser assemblies sold by Furukawa infringe Opnext Japan's Japanese patent No. 4,124,845. Opnext Japan is seeking an injunction as well as damages in the amount of 200.0 million Japanese yen.

On September 2, 2011, Tyco Electronics Subsea Communications, LLC (Tyco) filed a complaint against Opnext, Inc. in the Supreme Court of the State of New York, alleging that Opnext, Inc. failed to meet certain obligations owed to Tyco pursuant to a non-recurring engineering development agreement entered into between Opnext, Inc. and Tyco. The complaint sought contract damages in an amount not less than \$1 million, punitive damages, costs and attorneys' fees and such other relief as such court deemed just and proper. Opnext, Inc. filed a motion to dismiss this complaint on October 14, 2011. By decision and order dated August 13, 2012, the Court dismissed Tyco's complaint in its entirety. Tyco has filed a notice of appeal from the decision and order but has not yet perfected the appeal. We are unable at this time to estimate the effects of any possible appeal of this lawsuit on our financial position, results of operations or cash flows.

### **NOTE 11. STOCKHOLDERS' EQUITY**

On July 23, 2012, in connection with the Opnext acquisition, our stockholders approved an amendment to our restated certificate of incorporation to increase the total number of authorized shares of Oclaro to 176 million, consisting of 175 million shares of common stock and 1 million shares of preferred stock.

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In the first quarter of fiscal year 2013, we issued approximately 38.4 million shares of our common stock for all of the outstanding shares of Opnext common stock. We also issued approximately 4.3 million stock options and 0.2 million SARs in exchange for Opnext stock options and SARs. The fair value of the stock options and SARs was determined to be approximately \$1.9 million as of July 23, 2012.

During the three and nine months ended March 30, 2013, we issued 0.8 million and 1.1 million shares of common stock, respectively, under our 2011 Employee Stock Purchase Plan (ESPP), for total proceeds of \$1.0 million and \$1.7 million, respectively. The ESPP is more fully discussed in Note 12, *Employee Stock Plans*.

### **NOTE 12. EMPLOYEE STOCK PLANS** ***Stock Incentive Plans***

We currently maintain the Amended and Restated 2004 Stock Incentive Plan (Plan). Under the Plan, there are a total of 7.8 million shares of common stock authorized for issuance, with full value awards being counted as 1.25 shares of common stock for purposes of the share limit. The Plan expires in October 2020.

In connection with our acquisition of Opnext, we assumed Opnext's Amended and Restated 2001 Long-Term Stock Incentive Plan (Opnext Plan) and the shares reserved for issuance thereunder. After giving effect to the exchange ratio, the unused and converted share reserve thereunder consisted of 6.3 million shares of common stock as of the acquisition date. Subject to compliance with applicable NASDAQ listing requirements, we may grant new stock awards under the assumed Opnext Plan using such share reserve (including any shares returned to such share reserve as a result of the forfeiture or expiration of the stock awards assumed and converted by us) to our employees who are former Opnext employees and to new employees hired after the date of the acquisition.

As of March 30, 2013, there were 7.1 million shares of our common stock available for grant under both plans.

We generally grant stock options that vest over a four year service period, and restricted stock awards and units that vest over a one to four year service period, and in certain cases each may vest earlier based upon the achievement of specific performance-based objectives as set by our board of directors. We also have approximately 0.2 million SARs outstanding as of March 30, 2013, which we assumed in connection with our acquisition of Opnext. The SARs have an average remaining life of 2.4 years.

In July 2011, our board of directors approved a grant of performance stock units (PSUs) to certain executive officers. These PSUs vest, up to 150 percent of the target PSUs, upon the achievement of certain revenue growth targets through June 30, 2013, relative to certain comparable companies. Vesting is also contingent upon service conditions being met through August 2015. If the performance conditions are not achieved, then the corresponding PSUs will be forfeited in the first quarter of fiscal year 2014. During the second quarter of fiscal year 2013, we determined that the achievement of the performance conditions was probable at the 150 percent target level and recorded an additional 0.1 million PSUs outstanding. As of March 30, 2013, there was 0.3 million PSUs outstanding related to this grant, with an aggregate estimated grant date fair value of \$1.1 million.

In July 2012, our board of directors approved another grant of 0.6 million PSUs to certain executive officers, subject to shareholder approval of an increase in the number of shares available under our Plan. These PSUs are not included in the awards outstanding or granted disclosures or in stock-based compensation expense as they are not deemed granted for accounting purposes until the foregoing shareholder approval is obtained. We will record a cumulative adjustment for stock-based compensation expense based on the fair value of these awards at the date of approval. These PSUs vest upon the achievement of certain adjusted earnings before interest, taxes, depreciation and amortization (Adjusted EBITDA) targets through June 30, 2014. Vesting is also contingent upon service conditions being met through August 2016. If the performance conditions are not achieved, then the corresponding PSUs will be forfeited in the first quarter of fiscal year 2015.

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The following table summarizes the combined activity under all of our equity incentive plans for the nine months ended March 30, 2013:

	Shares Available For Grant (Thousands)	Stock Options / SARs Outstanding (Thousands)	Weighted- Average Exercise Price	Restricted Stock Awards / Units Outstanding (Thousands)	Weighted- Average Grant Date Fair Value
<b>Balances at June 30, 2012</b>	2,537	3,470	\$ 7.84	1,051	\$ 5.76
Assumed in acquisition	6,307	4,423	10.95	55	2.31
Granted	(3,445)	418	2.59	2,564	2.54
Exercised or released		(6)	1.11	(340)	5.96
Cancelled or forfeited	1,733	(1,564)	8.58	(193)	4.09
<b>Balances at March 30, 2013</b>	7,132	6,741	9.42	3,137	3.22

Supplemental disclosure information about our stock options and SARs outstanding as of March 30, 2013 is as follows:

	Shares (Thousands)	Weighted- Average Exercise Price	Weighted- Average Remaining Contractual Life (Years)	Aggregate Intrinsic Value (Thousands)
Options and SARs exercisable at March 30, 2013	5,132	\$ 10.63	5.4	\$ 84
Options and SARs outstanding at March 30, 2013	6,741	9.42	6.1	84

The aggregate intrinsic value in the table above represents the total pre-tax intrinsic value, based on the closing price of our common stock of \$1.26 on March 28, 2013, which would have been received by the option holders had all option holders exercised their options as of that date. There were approximately 0.2 million shares of common stock subject to in-the-money options which were exercisable as of March 30, 2013. We settle employee stock option exercises with newly issued shares of common stock.

### 2011 Employee Stock Purchase Plan (ESPP)

On October 26, 2011, our ESPP was approved by our stockholders. Under the ESPP, we reserved 1.7 million shares of our common stock for issuance. Our ESPP provides that eligible employees may contribute up to 15 percent of their eligible earnings toward the semi-annual purchase of our common stock. Participants may not purchase more than \$25,000 worth of common stock in any calendar year or 15,000 shares in any offering period. The ESPP is qualified under Section 423 of the Internal Revenue Code. The purchase price with respect to each offering period is equal to 85 percent of the lesser of (i) the fair market value of our common stock at the commencement of the applicable six-month offering period or (ii) the fair market value of our common stock on the purchase date (or, if not a trading day, on the immediately preceding trading day). In the third quarter of fiscal 2013, prior to commencing our third six-month offering period on February 16, 2013, we suspended the ESPP program because of the limited number of shares available for future issuance. At March 30, 2013, we had 0.6 million shares available for future issuance under our ESPP.

During the three and nine months ended March 30, 2013, we issued approximately 0.8 million and 1.1 million shares, respectively, in connection with our first and second offering periods, which ended on August 15, 2012 and February 15, 2013, respectively. The average purchase price for each share issued was \$1.23 and \$1.51 during the three and nine months ended March 30, 2013, respectively.

**Table of Contents****NOTE 13. STOCK-BASED COMPENSATION**

We recognize stock-based compensation expense in our statement of operations related to all share-based awards, including grants of stock options, based on the grant date fair value of such share-based awards. Estimating the grant date fair value of such share-based awards requires us to make judgments in the determination of inputs into the Black-Scholes stock option pricing model which we use to arrive at an estimate of the grant date fair value for such awards. The assumptions used in this model to value stock option grants for the three and nine months ended March 30, 2013 and March 31, 2012 were as follows:

	Three Months Ended		Nine Months Ended	
	March 30, 2013	March 31, 2012	March 30, 2013	March 31, 2012
	(Thousands)			
<b>Stock options:</b>				
Expected life		4.8 years	5.1 years	4.8 years
Risk-free interest rate		0.9%	0.7%	1.0%
Volatility		89.6%	82.9%	92.1%
Dividend yield				
<b>Purchase rights under ESPP:</b>				
Expected life		0.5 years	0.5 years	0.5 years
Risk-free interest rate		0.1%	0.1%	0.1%
Volatility		87.0%	67.0%	87.0%
Dividend yield				

The amounts included in cost of revenues and operating expenses for stock-based compensation for the three and nine months ended March 30, 2013 and March 31, 2012 were as follows:

	Three Months Ended		Nine Months Ended	
	March 30, 2013	March 31, 2012	March 30, 2013	March 31, 2012
	(Thousands)			
Stock-based compensation by category of expense:				
Cost of revenues	\$ 545	\$ 460	\$ 1,407	\$ 1,157
Research and development	431	349	1,338	1,090
Selling, general and administrative	810	863	2,695	2,683
	\$ 1,786	\$ 1,672	\$ 5,440	\$ 4,930
Stock-based compensation by type of award:				
Stock options	\$ 662	\$ 833	\$ 2,210	\$ 2,586
Restricted stock awards	903	652	2,577	2,264
Purchase rights under ESPP	158	104	731	104
Inventory adjustment to cost of revenues	63	83	(78)	(24)
	\$ 1,786	\$ 1,672	\$ 5,440	\$ 4,930

As of March 30, 2013 and June 30, 2012, we had capitalized approximately \$0.4 million and \$0.4 million, respectively, of stock-based compensation as inventory.

Included in stock-based compensation for the three and nine months ended March 30, 2013, is approximately \$0.1 million and \$0.3 million, respectively, in compensation cost related to the issuance of PSUs. In the second quarter of fiscal year 2013, we determined that the achievement of the performance conditions associated with the PSUs granted on August 2011 is probable at the 150 percent target level. We increased our stock-based compensation expense to reflect the anticipated achievement at the higher target levels. The amount of stock-based compensation expense recognized in any one period can vary based on the achievement or anticipated achievement of the performance conditions. If the

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performance conditions are not met or not expected to be met, no compensation cost would be recognized on the underlying PSUs, and any previously recognized compensation expense related to those PSUs would be reversed.



**Table of Contents****NOTE 14. INCOME TAXES**

The income tax provision of \$0.4 million and \$3.0 million for the three and nine months ended March 30, 2013, respectively, related primarily to our foreign operations.

The income tax provision of \$0.7 million and \$6.8 million for the three and nine months ended March 31, 2012, respectively, related primarily to our foreign operations. During the nine months ended March 31, 2012, we recorded \$4.1 million in income tax provision due to the impact of an impairment of certain net operating loss carryforwards in Switzerland.

The total amount of our unrecognized tax benefits as of March 30, 2013 and June 30, 2012 were approximately \$9.0 million and \$7.2 million, respectively. As of March 30, 2013, we had \$3.8 million in unrecognized tax benefits that, if recognized, would affect our effective tax rate. We are currently under tax audit in China and Israel, and although we do not anticipate any material adjustments, we cannot determine the outcome of these examinations.

**NOTE 15. NET LOSS PER SHARE**

Basic net loss per share is computed using only the weighted-average number of shares of common stock outstanding for the applicable period, while diluted net loss per share is computed assuming conversion of all potentially dilutive securities, such as stock options, unvested restricted stock awards, warrants, shares issuable in connection with convertible notes and obligations under escrow agreements during such period. For the three and nine months ended March 30, 2013, we excluded 24.2 million and 15.7 million, respectively, of outstanding stock options, stock appreciation rights, unvested restricted stock awards and shares issuable in connection with convertible notes from the calculation of diluted net loss per share because their effect would have been anti-dilutive. For the three and nine months ended March 31, 2012, we excluded 4.2 million and 4.7 million of outstanding stock options, warrants and unvested restricted stock awards, respectively, from the calculation of diluted net loss per share because their effect would have been anti-dilutive.

**NOTE 16. GEOGRAPHIC INFORMATION, PRODUCT GROUPS AND CUSTOMER CONCENTRATION INFORMATION**  
*Geographic Information*

The following table shows revenues by geographic area based on the delivery locations of our products:

	Three Months Ended		Nine Months Ended	
	March 30, 2013	March 31, 2012	March 30, 2013	March 31, 2012
	(Thousands)			
United States	\$ 18,075	\$ 14,861	\$ 60,023	\$ 47,716
China, excluding Hong Kong	6,020	9,718	32,181	33,286
Hong Kong	34,640	8,613	96,845	28,799
Germany	18,764	11,613	55,719	34,094
Italy	4,916	3,092	20,905	18,984
Japan	13,894	19,915	45,135	48,070
Thailand	6,858	6,402	21,360	24,132
Malaysia	11,415	687	35,305	2,221
Rest of world	27,060	13,808	82,447	43,716
	\$ 141,642	\$ 88,709	\$ 449,920	\$ 281,018

**Table of Contents****Product Groups**

The following table sets forth revenues by product group:

	Three Months Ended		Nine Months Ended	
	March 30, 2013	March 31, 2012	March 30, 2013	March 31, 2012
	(Thousands)			
40 Gb/s and 100 Gb/s transmission modules (1)	\$ 37,661	\$ 18,979	\$ 105,253	\$ 51,079
10 Gb/s and lower transmission modules (1)	42,290	9,359	128,876	32,617
Transmission components (2)	22,281	23,878	71,748	70,958
Amplification, filtering and optical switching (3)	20,817	23,301	86,819	83,349
Industrial and consumer (4)	18,593	13,192	57,224	43,015
	\$ 141,642	\$ 88,709	\$ 449,920	\$ 281,018

- (1) Includes 10 Gb/s, 40 Gb/s and 100 Gb/s transponders and transceivers.
- (2) Includes lasers, modulators, laser pumps, receivers and integrated lasers and modulators.
- (3) Includes amplifiers, micro-optics, dispersion compensation management, WSS modules, subsystems, ROADM line cards and thin film filters.
- (4) Includes high power laser, visible laser and VCSEL.

**Significant Customers and Concentration of Credit Risk**

For the three months ended March 30, 2013, Cisco Systems, Inc. (Cisco) accounted for 11 percent and Huawei Technologies Co., Ltd. (Huawei) accounted for 11 percent of our revenues. For the nine months ended March 30, 2013, Cisco accounted for 12 percent and Huawei accounted for 11 percent of our revenues.

For the three months ended March 31, 2012, Fujitsu Limited (Fujitsu) accounted for 16 percent of our revenues. For the nine months ended March 31, 2012, Fujitsu accounted for 14 percent and Huawei accounted for 10 percent of our revenues.

As of March 30, 2013, Huawei accounted for 14 percent, Nokia Siemens Networks accounted for 10 percent and Alcatel-Lucent accounted for 10 percent of our accounts receivable. As of June 30, 2012, Huawei and Ciena each accounted for 12 percent, Tellabs, Inc. accounted for 11 percent and Alcatel-Lucent accounted for 10 percent of our accounts receivable.

**NOTE 17. RELATED PARTY TRANSACTIONS**

As a result of our acquisition of Opnext on July 23, 2012, Hitachi, Ltd. (Hitachi) holds approximately 13 percent of our outstanding common stock as of March 30, 2013.

We continue to enter into transactions with Hitachi in the normal course of business. Sales to Hitachi were \$1.3 million and \$8.6 million for the three and nine months ended March 30, 2013, respectively. Purchases from Hitachi were \$5.1 million and \$16.3 million for the three and nine months ended March 30, 2013, respectively. At March 30, 2013 we had \$2.8 million accounts receivable due from Hitachi and \$1.8 million accounts payable due to Hitachi. We also have certain capital equipment leases with Hitachi Capital Corporation as described in Note 10, *Commitments and Contingencies* and we lease certain facilities in Japan from Hitachi.

We are now party to the following material agreements with Hitachi:

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### Intellectual Property License Agreements

We are party to two intellectual property license agreements pursuant to which Hitachi licenses certain intellectual property rights to us on the terms and subject to the conditions stated therein on a fully paid, nonexclusive basis and we license certain intellectual property rights to Hitachi on a fully paid, nonexclusive basis. Hitachi has also agreed to sublicense certain intellectual property to us to the extent that Hitachi has the right to make available such rights to us in accordance with the terms and subject to the conditions stated therein.

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We are also party to an intellectual property license agreement with Hitachi Communication Technologies, Ltd., a wholly owned subsidiary of Hitachi, whereby Hitachi Communication Technologies, Ltd. licenses certain intellectual property rights to us on a fully paid, nonexclusive basis, and we license certain intellectual property rights to Hitachi Communication Technologies, Ltd. on a fully paid, nonexclusive basis.

### *Research and Development Agreement*

We are party to a Research and Development Agreement pursuant to which Hitachi provides certain research and development support to us in accordance with the terms and conditions of the agreement. Intellectual property resulting from certain research and development projects is owned by us and licensed to Hitachi on a fully paid, nonexclusive basis. Intellectual property resulting from certain other research and development projects is owned by Hitachi and licensed to us on a fully paid, nonexclusive basis. Certain other intellectual property is jointly owned.

## **NOTE 18. SUBSEQUENT EVENTS**

### ***Amendment Number Two to Amended and Restated Credit Agreement***

Oclaro, Inc., (the *Parent*), is a party to the Second Amended and Restated Credit Agreement, dated as of November 2, 2012 (as amended, the *Credit Agreement*), among the Parent, Oclaro Technology Limited, (the *Borrower*), each lender party thereto (the *Lenders*) and Wells Fargo Capital Finance, Inc., a California corporation (the *Agent*), as administrative agent for the Lenders.

On May 6, 2013, Parent, Borrower, the Lenders, the Agent and PECM Strategic Funding LP and Providence TMT Debt Opportunity Fund II LP (the *Term Lenders*) entered into Amendment Number Two to the Credit Agreement and the associated guaranties and security agreements (the *Amendment*), which amended the Credit Agreement in pertinent part by: (i) adding a \$25 million term loan (the *Term Loan*) to be provided by the Term Lenders; (ii) reducing the revolving credit facility from \$80 million to \$50 million (to be further reduced on a dollar-for-dollar basis by an amount equal to the net proceeds of certain asset sale transactions that the Parent may undertake in the future), eliminating the Borrower's option to increase the revolving credit facility to \$100 million and implementing an availability block under the revolving credit facility of at least \$10 million; (iii) removing the financial covenants so that Borrower is not required to maintain a minimum of \$15 million of availability under the revolving credit facility or \$15 million in qualified cash balances; (iv) adding an affirmative covenant that Borrower shall have consummated one or more asset sales in the very near term and with a minimum threshold of net proceeds as set forth in the Amendment, and (v) providing for payments and proceeds of asset sales to be applied to repay the credit facility and the Term Loan (with the first \$20.0 million of such proceeds being applied to repay Wells Fargo Capital Finance, Inc. and Silicon Valley Bank, the next \$25.0 being applied to repay Providence and the remaining proceeds being used to repay Wells Fargo Capital Finance, Inc. and Silicon Valley Bank all amounts outstanding under the credit facility), and events of default relating thereto. If any event of default were to occur, including a failure to comply with the covenant regarding asset sales described above, such an event of default would (unless waived by the Lenders) entitle the Lenders, upon notice to the Borrower and the Parent, to declare the Term Loan and all other amounts owing under the Credit Agreement, immediately due and payable.

The Term Loan is payable in full on May 5, 2014. There are no amortization payments, but the Term Loan must be repaid with the proceeds of certain asset sale transactions as described above.

The Borrower paid the revolving lenders an amendment fee of \$500,000 and the Term Lenders a closing fee of \$2,125,000. Borrower may only prepay the principal amount of the Term Loan, in whole or in part, with the prior written consent of the Required Lenders (as defined in the Amendment). Any prepayments made on the Term Loan obligations after six months following the effective date of the term loan will be at 105% of the related obligations.

Interest on the Term Loan obligations accrues at a per annum rate equal to the sum of: (A) the PIK Term Loan Interest Rate, with such accrued interest to be capitalized quarterly and added to the outstanding principal balance of the Term Loan, and (B) the Cash Term Loan Interest Rate. The PIK Term Loan Interest Rate is 2.0% beginning on the effective date of the Term Loan (the *Effective Date*) up to but excluding the date six months thereafter, then it is 4.0% until the date twelve months after the Effective Date and then it is 5.0%. The Cash Term Loan Interest Rate is 7.0% beginning on the Effective Date up to but excluding the date six months thereafter, then it is 8.5% until the date twelve months after the Effective Date and then it is 10.0%.



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No changes were made to the interest rates or commitment fees payable under the revolving credit facility.

The obligations of the Borrower under the Credit Agreement are guaranteed by the Parent and all significant subsidiaries of the Parent and the Borrower (collectively, the Guarantors), and are secured, pursuant to two security agreements by substantially all of the assets of the Borrower and the Guarantors, including a pledge of the capital stock holdings of the Borrower and certain Guarantors in their direct subsidiaries.

Borrowings made under the Credit Agreement are subject to the terms and conditions of the Credit Agreement, as described in the Current Reports on Form 8-K filed by Parent with the Securities and Exchange Commission on November 5, 2012 and January 29, 2013, as such terms and conditions have been amended by the Amendment.

### ***Issuance of Warrants***

On May 6, 2013, we entered into the Amendment described above, pursuant to which we issued warrants to purchase, in the aggregate, 1,836,000 shares of our common stock at an exercise price of \$1.50 per share (subject to adjustment from time to time, as provided in the Warrants). The Warrants are being issued by us in consideration of the Term Lenders entering into the Amendment and providing the Term Loan. The offer and sale of the Warrants was not registered under the Securities Act of 1933 in reliance upon the exemption from registration under Section 4(2) of the Securities Act as such transaction did not involve a public offering of securities. We also granted to the Term Lenders certain registration rights with respect to the warrants.

The Warrants expire on May 6, 2014, and they may be exercised prior to maturity at the option of the holders.

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### **ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

This Quarterly Report on Form 10-Q and the documents incorporated herein by reference contain forward-looking statements, within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended, and Section 27A of the Securities Act of 1933, as amended, about our future expectations, plans or prospects and our business. You can identify these statements by the fact that they do not relate strictly to historical or current events, and contain words such as anticipate, estimate, expect, project, intend, will, plan, believe, should, could, target, model, and other words of similar meaning in connection with discussion of future operating or financial performance. We have based our forward looking statements on our management's beliefs and assumptions based on information available to our management at the time the statements are made. There are a number of important factors that could cause our actual results or events to differ materially from those indicated by such forward-looking statements, including (i) the future performance of Oclaro and its ability to effectively integrate the operations of acquired companies following the closing of acquisitions and mergers, including its merger with Opnext, (ii) the potential inability to realize the expected and ongoing benefits and synergies of acquisitions and mergers, (iii) the impact to our operations, revenues and financial condition attributable to the flooding in Thailand, (iv) the impact of continued uncertainty in world financial markets and any resulting reduction in demand for our products, (v) our ability to meet or exceed our gross margin expectations, (vi) the effects of fluctuating product mix on our results, (vii) our ability to timely develop and commercialize new products, (viii) our ability to reduce costs and operating expenses, (ix) our ability to respond to evolving technologies and customer requirements and demands, (x) our dependence on a limited number of customers for a significant percentage of our revenues, (xi) our ability to maintain strong relationships with certain customers, (xii) our ability to effectively compete with companies that have greater name recognition, broader customer relationships and substantially greater financial, technical and marketing resources than we do, (xiii) our ability to effectively and efficiently transition to an outsourced back-end assembly and test model, (xiv) our ability to timely capitalize on any increase in market demand, (xv) increased costs related to downsizing and compliance with regulatory and legal requirements in connection with such downsizing, (xvi) competition and pricing pressure, (xvii) the potential lack of availability of credit or opportunity for equity based financing, (xviii) the risks associated with our international operations, (xix) our ability to service and repay our outstanding indebtedness pursuant to the terms of the applicable agreements, (xx) the outcome of tax audits or similar proceedings, (xxi) the outcome of pending litigation against the company, (xxii) our ability to maintain or increase our cash reserves and obtain financing on terms acceptable to us or at all, and (xxiii) other factors described in Oclaro's most recent annual report on Form 10-K, quarterly report on Form 10-Q and other documents we periodically file with the SEC. We cannot guarantee any future results, levels of activity, performance or achievements. Moreover, we assume no obligation to update forward-looking statements or update the reasons actual results could differ materially from those anticipated in forward-looking statements. Several of the important factors that may cause our actual results to differ materially from the expectations we describe in forward-looking statements are identified in the sections captioned Management's Discussion and Analysis of Financial Condition and Results of Operations and Risk Factors in this Quarterly Report on Form 10-Q and the documents incorporated herein by reference.

### **OVERVIEW**

We are a tier-one provider of optical communications and laser components, modules and subsystems for a broad range of diverse markets, including telecommunications (telecom), industrial, scientific, consumer electronics and medical. In all markets, our approach is to offer a differentiated solution that is designed to make it easier for our customers to do business by combining optical technology innovation, photonic integration, and a vertically integrated approach to manufacturing and product development.

Our customers include Huawei Technologies Co. Ltd (Huawei); Alcatel-Lucent; Ciena Corporation (Ciena); Fujitsu Limited (Fujitsu); Tellabs, Inc.; Infinera Corporation; Cisco Systems, Inc. (Cisco); Nokia Siemens Networks; ADVA Optical Networking; Laserline Inc.; and Ericsson.

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### RECENT EVENTS

Oclaro, Inc., (the "Parent"), is a party to the Second Amended and Restated Credit Agreement, dated as of November 2, 2012 (as amended, the "Credit Agreement"), among the Parent, Oclaro Technology Limited, (the "Borrower"), each lender party thereto (the "Lenders") and Wells Fargo Capital Finance, Inc., a California corporation (the "Agent"), as administrative agent for the Lenders. On May 6, 2013, Parent, Borrower, the Lenders, the Agent and PECM Strategic Funding LP and Providence TMT Debt Opportunity Fund II LP (the "Term Lenders") entered into Amendment Number Two to the Credit Agreement and the associated guaranties and security agreements. See Note 18, *Subsequent Events*, to the accompanying condensed consolidated financial statements for a description of Amendment Number Two.

### RESULTS OF OPERATIONS

The following tables set forth our condensed consolidated results of operations for the three and nine month periods indicated, along with amounts expressed as a percentage of revenues, and comparative information regarding the absolute and percentage changes in these amounts:

	Three Months Ended				Change (Thousands)	Increase (Decrease) %
	March 30, 2013 (Thousands)	%	December 29, 2012 (Thousands)	%		
Revenues	\$ 141,642	100.0	\$ 159,465	100.0	\$ (17,823)	(11.2)
Cost of revenues	128,868	91.0	137,183	86.0	(8,315)	(6.1)
Gross profit	12,774	9.0	22,282	14.0	(9,508)	(42.7)
Operating expenses:						
Research and development	25,237	17.8	25,750	16.1	(513)	(2.0)
Selling, general and administrative	22,465	15.9	22,896	14.4	(431)	(1.9)
Amortization of intangible assets	2,400	1.7	2,402	1.5	(2)	(0.1)
Restructuring, acquisition and related (gains) costs, net	3,085	2.2	(23,665)	(14.8)	26,750	n/m <sup>(1)</sup>
Flood-related (income) expense, net	(11,548)	(8.2)	641	0.4	(12,189)	n/m <sup>(1)</sup>
Loss on sale of property and equipment	74		6		68	1,133.3
Total operating expenses	41,713	29.4	28,030	17.6	13,683	48.8
Operating loss	(28,939)	(20.4)	(5,748)	(3.6)	(23,191)	403.5
Other income (expense):						
Interest income (expense), net	(1,103)	(0.8)	(649)	(0.4)	(454)	70.0
Loss on foreign currency translation	(7,353)	(5.2)	(3,423)	(2.2)	(3,930)	114.8
Other income (expense)	(3,760)	(2.6)			(3,760)	n/m <sup>(1)</sup>
Total other income (expense)	(12,216)	(8.6)	(4,072)	(2.6)	(8,144)	200.0
Loss before income taxes	(41,155)	(29.0)	(9,820)	(6.2)	(31,335)	319.1
Income tax provision	386	0.3	1,424	0.9	(1,038)	(72.9)
Net loss	\$ (41,541)	(29.3)	\$ (11,244)	(7.1)	\$ (30,297)	269.5



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	Three Months Ended				Change (Thousands)	Increase (Decrease) %
	March 30, 2013		March 31, 2012			
	(Thousands)	%	(Thousands)	%		
Revenues	\$ 141,642	100.0	\$ 88,709	100.0	\$ 52,933	59.7
Cost of revenues	128,868	91.0	75,021	84.6	53,847	71.8
Gross profit	12,774	9.0	13,688	15.4	(914)	(6.7)
Operating expenses:						
Research and development	25,237	17.8	15,045	17.0	10,192	67.7
Selling, general and administrative	22,465	15.9	14,889	16.8	7,576	50.9
Amortization of intangible assets	2,400	1.7	775	0.9	1,625	209.7
Restructuring, acquisition and related (gains) costs, net	3,085	2.2	2,189	2.4	896	40.9
Flood-related income, net	(11,548)	(8.2)	(3,267)	(3.7)	(8,281)	253.5
(Gain) loss on sale of property and equipment	74		(13)		87	n/m <sup>(1)</sup>
Total operating expenses	41,713	29.4	29,618	33.4	12,095	40.8
Operating loss	(28,939)	(20.4)	(15,930)	(18.0)	(13,009)	81.7
Other income (expense):						
Interest income (expense), net	(1,103)	(0.8)	(303)	(0.3)	(800)	264.0
Loss on foreign currency translation	(7,353)	(5.2)	(261)	(0.3)	(7,092)	2,717.2
Other income (expense)	(3,760)	(2.6)			(3,760)	n/m <sup>(1)</sup>
Total other income (expense)	(12,216)	(8.6)	(564)	(0.6)	(11,652)	2,066.0
Loss before income taxes	(41,155)	(29.0)	(16,494)	(18.6)	(24,661)	149.5
Income tax provision	386	0.3	668	0.7	(282)	(42.2)
Net loss	\$ (41,541)	(29.3)	\$ (17,162)	(19.3)	\$ (24,379)	142.1

(1) Not meaningful.

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	Nine Months Ended				Change (Thousands)	Increase (Decrease) %
	March 30, 2013 (Thousands)	%	March 31, 2012 (Thousands)	%		
Revenues	\$ 449,920	100.0	\$ 281,018	100.0	\$ 168,902	60.1
Cost of revenues	396,425	88.1	232,422	82.7	164,003	70.6
Gross profit	53,495	11.9	48,596	17.3	4,899	10.1
Operating expenses:						
Research and development	76,752	17.1	49,736	17.7	27,016	54.3
Selling, general and administrative	69,778	15.5	46,848	16.7	22,930	48.9
Amortization of intangible assets	6,828	1.5	2,224	0.8	4,604	207.0
Restructuring, acquisition and related (gains) costs, net	(7,944)	(1.8)	3,643	1.3	(11,587)	n/m <sup>(1)</sup>
Flood-related (income) expense, net	(10,643)	(2.3)	5,821	2.1	(16,464)	n/m <sup>(1)</sup>
Loss on sale of property and equipment	62		84		(22)	(26.2)
Total operating expenses	134,833	30.0	108,356	38.6	26,477	24.4
Operating loss	(81,338)	(18.1)	(59,760)	(21.3)	(21,578)	36.1
Other income (expense):						
Interest income (expense), net	(2,230)	(0.5)	(705)	(0.3)	(1,525)	216.3
Gain (loss) on foreign currency translation	(10,580)	(2.4)	2,429	0.9	(13,009)	n/m <sup>(1)</sup>
Other income (expense)	(3,760)	(0.8)	2,238	0.8	(5,998)	n/m <sup>(1)</sup>
Gain on bargain purchase	27,865	6.2			27,865	n/m <sup>(1)</sup>
Total other income (expense)	11,295	2.5	3,962	1.4	7,333	185.1
Loss before income taxes	(70,043)	(15.6)	(55,798)	(19.9)	(14,245)	25.5
Income tax provision	2,993	0.6	6,774	2.4	(3,781)	(55.8)
Net loss	\$ (73,036)	(16.2)	\$ (62,572)	(22.3)	\$ (10,464)	16.7

(1) Not meaningful.

**Revenues**

Revenues for the three months ended March 30, 2013 decreased by \$17.8 million, or 11 percent, compared to the three months ended December 29, 2012. The decrease in revenues was primarily due to a decline in demand for our products, largely associated with market conditions. Market demand across most of our product groups was weaker than expected during the three months ended March 30, 2013 as compared to the three months ended December 29, 2012, and reflected in particular seasonal fluctuations. We believe our revenues in the fourth quarter of fiscal year 2013 will continue to remain relatively flat as compared to the three months ended March 30, 2013, reflecting a sustained slowdown in the demand for our products, especially within the telecom market. The decrease in our revenues during the three months ended March 30, 2013 is also partially a result of our sale of the thin film filter business and interleaver product line during the second quarter of fiscal year 2013, which resulted in approximately \$2.5 million in lower revenues in the third quarter of fiscal year 2013. Compared to the three months ended December 29, 2012, revenues from sales of our 40 Gb/s and 100 Gb/s transmission modules decreased by \$0.5 million, or 1 percent; revenues from sales of our 10 Gb/s transmission modules decreased by \$5.5 million, or 12 percent; revenues from sales of our amplification, filtering and optical switching products decreased by \$10.4 million, or 33 percent; revenues from sales of our industrial and consumer products decreased by \$1.5 million, or 8 percent; and revenues from sales of our transmission components remained relatively flat.

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Revenues for the three months ended March 30, 2013 increased by \$52.9 million, or 60 percent, compared to the three months ended March 31, 2012. The increase was primarily due to the inclusion of revenues in fiscal year 2013 generated through the acquisition of Opnext on July 23, 2012. Compared to the three months ended March 31, 2012, revenues from sales of our 40 Gb/s and 100 Gb/s transmission modules increased by \$18.7 million, or 98 percent; revenues from sales of our 10 Gb/s transmission modules increased by \$32.9 million, or 352 percent; revenues from sales of our amplification, filtering and optical switching products decreased by \$2.5 million, or 11 percent; revenues from sales of our transmission components decreased by \$1.6 million, or 7 percent; and revenues from sales of our industrial and consumer products increased by \$5.4 million, or 41 percent. The increase in revenue for these respective product groups was mainly attributable to our acquisition of Opnext and also our recovery from the Thai flood. The increase in revenues was also attributable to approximately \$4.0 million in lower than expected revenues during the three months ended March 31, 2012, due to a short-term work stoppage in our China factory, which was subsequently resolved in the fourth quarter of fiscal year 2012. However, we believe that market demand for optical components was weaker during the three months ended March 30, 2013 than the three months ended March 31, 2012. After adjusting for the estimated impacts of the flood and work stoppage, our pro forma combined revenues including Oclaro and Opnext are lower in the current quarter than for the comparable quarter of the prior year as a result of these market conditions.

For the three months ended March 30, 2013, Cisco Systems, Inc. (Cisco) accounted for \$16.1 million, or 11 percent, of our revenues, and Huawei Technologies Co., Ltd. (Huawei) accounted for \$15.8 million, or 11 percent, of our revenues. For the three months ended December 29, 2012, Cisco accounted for \$17.9 million, or 11 percent, of our revenues, Alcatel-Lucent accounted for \$16.5 million, or 10 percent, of our revenues, and Huawei accounted for \$16.0 million, or 10 percent, of our revenues. For the three months ended March 31, 2012, Fujitsu Limited (Fujitsu) accounted for \$14.3 million, or 16 percent, of our revenues.

Revenues for the nine months ended March 30, 2013 increased by \$168.9 million, or 60 percent, compared to the nine months ended March 31, 2012. The increase was primarily due to the inclusion of revenues in fiscal year 2013 generated through the acquisition of Opnext on July 23, 2012. Compared to the nine months ended March 31, 2012, revenues from sales of our 40 Gb/s and 100 Gb/s transmission modules increased by \$54.2 million, or 106 percent; revenues from sales of our 10 Gb/s transmission modules increased by \$96.3 million, or 295 percent; revenues from sales of our transmission components increased by \$0.8 million, or 1 percent; revenues from sales of our amplification, filtering and optical switching products increased by \$3.5 million, or 4 percent; and revenues from sales of our industrial and consumer products increased by \$14.2 million, or 33 percent. The increase in revenue for these respective product groups was mainly attributable to our acquisition of Opnext and also our recovery from the Thai flood. The increase in revenues was also attributable to approximately \$4.0 million in lower than expected revenues during the nine months ended March 31, 2012, due to a short-term work stoppage in our China factory, which was subsequently resolved in the fourth quarter of fiscal year 2012. However, we believe that market demand for optical components was weaker during the nine months ended March 30, 2013 than the nine months ended March 31, 2012. After adjusting for the estimated impacts of the flood and work stoppage, our pro forma combined revenues including Oclaro and Opnext are lower for the nine months ended March 30, 2013 than for the comparable period of the prior year as a result of these market conditions.

For the nine months ended March 30, 2013, Cisco accounted for \$53.5 million, or 12 percent, of our revenues, and Huawei accounted for \$48.5 million, or 11 percent, of our revenues. For the nine months ended March 31, 2012, Fujitsu accounted for \$38.2 million, or 14 percent, of our revenues, and Huawei accounted for \$28.5 million, or 10 percent, of our revenues.

### ***Cost of Revenues***

Our cost of revenues consists of the costs associated with manufacturing our products, and includes the purchase of raw materials, labor costs and related overhead, including stock-based compensation charges, and the costs charged by our contract manufacturers on the products they manufacture. Charges for excess and obsolete inventory, including in regards to inventories procured by contract manufacturers on our behalf, the cost of product returns and warranty costs are also included in cost of revenues. Costs and expenses related to our manufacturing resources which are incurred in connection with the development of new products are included in research and development expense.

Our cost of revenues for the three months ended March 30, 2013 decreased by \$8.3 million, or 6 percent, from the three months ended December 29, 2012. The decrease was primarily related to a reduction in costs associated with lower volumes of revenue attributable to a decrease in product sales.

Our cost of revenues for the three months ended March 30, 2013 increased by \$53.8 million, or 72 percent, from the three months ended March 31, 2012. The increase was primarily related to higher costs associated with the inclusion of cost of revenues in fiscal year 2013 generated through the acquisition of Opnext on July 23, 2012.

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Our cost of revenues for the nine months ended March 30, 2013 increased by \$164.0 million, or 71 percent, from the nine months ended March 31, 2012. The increase was primarily related to higher costs associated with the inclusion of cost of revenues in fiscal year 2013 generated through the acquisition of Opnext on July 23, 2012.

### ***Gross Profit***

Gross profit is calculated as revenues less cost of revenues. Gross margin rate is gross profit reflected as a percentage of revenues.

Our gross margin rate decreased by 5 percent for the three months ended March 30, 2013, to 9 percent, compared to the three months ended December 29, 2012. The 5 percentage point decline in gross margin rate was primarily attributable to lower total revenues compared to our fixed overhead costs, as well as direct cost improvements in certain of our products not matching the level of average price erosion for those products, and due to higher excess and obsolete inventory valuation charges.

Our gross margin rate decreased by 6 percent for the three months ended March 30, 2013, to 9 percent, compared to the three months ended March 31, 2012. The 6 percentage point decline in gross margin rate was primarily attributable to a lower margin over direct costs of our products, with a primary factor being the change in product mix to a higher mix of lower margin fixed wavelength 10 Gb/s transmission products, as well as direct cost improvements in certain of our products not matching the level of average price erosion for those products, and due to higher excess and obsolete inventory valuation charges. The decrease in our gross margin rate was also due to the re-assignment of certain of our manufacturing employees to efforts to restore our production capacity following the flood in Thailand, which resulted in a \$1.2 million higher gross profit than would have otherwise been recorded for the three months ended March 31, 2012, as these costs were included in flood-related (income) expense during that period.

Our gross margin rate decreased by 5 percent for the nine months ended March 30, 2013, to 12 percent, compared to the nine months ended March 31, 2012. The 5 percentage point decline in gross margin rate was primarily attributable to product mix with a higher mix of lower margin fixed wavelength 10 Gb/s transmission products, and due to higher excess and obsolete inventory valuation charges. The decrease in our gross margin rate was also due to the re-assignment of certain of our manufacturing employees to efforts to restore our production capacity following the flood in Thailand, which resulted in a \$1.7 million higher gross profit than would have otherwise been recorded for the nine months ended March 31, 2012, as these costs were included in flood-related (income) expense during that period. The decrease in gross margin rate was partially offset by lower revenues in the second and third quarters of fiscal 2012 in relation to overhead expenses, in part caused by the flooding in Thailand and the short-term work stoppage in our China factory, resulting in a lower gross margin for that period.

### ***Research and Development Expenses***

Research and development expenses consist primarily of salaries and related costs of employees engaged in research and design activities, including stock-based compensation charges related to those employees, costs of design tools and computer hardware, costs related to prototyping and facilities costs for certain research and development focused sites.

Research and development expenses decreased to \$25.2 million for the three months ended March 30, 2013 from \$25.7 million for the three months ended December 29, 2012. The decrease in research and development expenses was primarily related to a favorable impact from the Japanese yen weakening relative to the U.S. dollar. Personnel-related costs decreased to \$14.6 million for the three months ended March 30, 2013, compared with \$15.0 million for the three months ended December 29, 2012, and other costs, including the costs of design tools and facilities-related costs decreased to \$10.6 million for the three months ended March 30, 2013, compared with \$10.7 million for the three months ended December 29, 2012.

Research and development expenses increased to \$25.2 million for the three months ended March 30, 2013 from \$15.0 million for the three months ended March 31, 2012. The increase was primarily related to the inclusion of research and development expenses in fiscal year 2013 to fund research and development associated with products acquired through the acquisition of Opnext on July 23, 2012, partially offset by other cost reduction efforts in response to softening market conditions and lower post-flood revenues. Personnel-related costs increased to \$14.6 million for the three months ended March 30, 2013, compared with \$10.6 million for the three months ended March 31, 2012, primarily as a result of an increase in personnel numbers following our acquisition of Opnext. In addition, in the third quarter of fiscal year 2012, as part of our Thailand flood recovery efforts, certain of our research and development employees were redirected to efforts to restore our production capacity. As a result, our research and development expenses were \$0.6 million lower than they would have been otherwise, as these amounts were recorded in flood-related (income) expense, net, for the three months ended March 31, 2012. Other costs, including the costs of design tools and facilities-related costs increased to \$10.6 million for the three months ended March 30, 2013, compared with \$4.5 million for the three months ended March 31, 2012.



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Research and development expenses increased to \$76.8 million for the nine months ended March 30, 2013 from \$49.7 million for the nine months ended March 31, 2012. The increase was primarily related to the inclusion of research and development expenses in fiscal year 2013 to fund research and development associated with products acquired through the acquisition of Opnext on July 23, 2012, partially offset by a reduction in research and development expenses related to synergies from aligning and reducing combined research and development resources of Oclaro and Opnext in association with the merger, and other cost reduction efforts in response to softening market conditions and lower post-flood revenues. Personnel-related costs increased to \$44.1 million for the nine months ended March 30, 2013, compared with \$30.8 million for the nine months ended March 31, 2012, primarily as a result of an increase in personnel numbers following our acquisition of Opnext. In addition, in the second and third quarters of fiscal year 2012, as part of our Thailand flood recovery efforts, certain of our research and development employees were redirected to efforts to restore our production capacity. As a result, our research and development expenses were \$1.1 million lower than they would have been otherwise, as these amounts were recorded in flood-related (income) expense, net, for the nine months ended March 31, 2012. Other costs, including the costs of design tools and facilities-related costs increased to \$32.7 million for the nine months ended March 30, 2013, compared with \$18.9 million for the nine months ended March 31, 2012.

***Selling, General and Administrative Expenses***

Selling, general and administrative expenses consist primarily of personnel-related expenses, including stock-based compensation charges related to employees engaged in sales, general and administrative functions, legal and professional fees, facilities expenses, insurance expenses and certain information technology costs.

Selling, general and administrative expenses decreased to \$22.5 million for the three months ended March 30, 2013, from \$22.9 million for the three months ended December 29, 2012. The decrease was primarily related to a reduction in selling, general and administrative expenses related to favorable impact from the Japanese yen weakening relative to the U.S. dollar. Personnel-related costs decreased to \$12.9 million for the three months ended March 30, 2013, compared with \$13.6 million for the three months ended December 29, 2012, and other costs, including legal and professional fees, facilities expenses and other miscellaneous expenses, increased to \$9.5 million for the three months ended March 30, 2013, compared with \$9.3 million for the three months ended March 31, 2012. Of the \$9.5 million in other costs incurred in the third quarter of fiscal year 2013, \$2.7 million related to audit, professional fees and insurance costs, \$2.8 million related to sales and marketing costs, \$1.8 million related to information technology costs, \$1.6 million related to legal and executive costs, and \$0.6 million related to human resources costs.

Selling, general and administrative expenses increased to \$22.5 million for the three months ended March 30, 2013, from \$14.9 million for the three months ended March 31, 2012. The increase was primarily related to the inclusion of selling, general and administrative expenses in fiscal year 2013 attributable to the operations of Opnext, partially offset by a reduction in selling, general and administrative expenses related to synergies from aligning and reducing combined selling, general and administrative resources of Oclaro and Opnext in association with the merger, and other cost reduction efforts in response to softening market conditions and lower post-flood revenues. Personnel-related costs increased to \$12.9 million for the three months ended March 30, 2013, compared with \$9.1 million for the three months ended March 31, 2012, primarily as a result of an increase in personnel numbers following our acquisition of Opnext. Other costs, including legal and professional fees, facilities expenses and other miscellaneous expenses, increased to \$9.5 million for the three months ended March 30, 2013, compared with \$5.8 million for the three months ended March 31, 2012.

Selling, general and administrative expenses increased to \$69.8 million for the nine months ended March 30, 2013, from \$46.8 million for the nine months ended March 31, 2012. The increase was primarily related to the inclusion of selling, general and administrative expenses in fiscal year 2013 attributable to the operations of Opnext, partially offset by a reduction in selling, general and administrative expenses related to synergies from aligning and reducing combined selling, general and administrative resources of Oclaro and Opnext in association with the merger, and other cost reduction efforts in response to softening market conditions and lower post-flood revenues. Personnel-related costs increased to \$40.2 million for the nine months ended March 30, 2013, compared with \$28.5 million for the nine months ended March 31, 2012, primarily as a result of an increase in personnel numbers following our acquisition of Opnext. Other costs, including legal and professional fees, facilities expenses and other miscellaneous expenses, increased to \$29.6 million for the nine months ended March 30, 2013, compared with \$18.4 million for the nine months ended March 31, 2012. Of the \$29.6 million in other costs incurred during the nine months ended March 30, 2013, \$9.8 million related to audit, professional fees and insurance costs, \$8.4 million related to sales and marketing costs, \$5.8 million related to information technology costs, \$3.7 million related to legal and executive costs, and \$1.9 million related to human resources costs.

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### ***Amortization of Intangible Assets***

Amortization of intangible assets for the three months ended March 30, 2013 remained flat as compared to the three months ended December 29, 2012.

Amortization of intangible assets increased to \$2.4 million and \$6.8 million for the three and nine months ended March 30, 2013, respectively, from \$0.8 million and \$2.2 million for the three and nine months ended March 31, 2012, respectively. The increase is a result of our acquisition of Opnext, in which we recorded \$28.0 million in intangible assets as our preliminary estimate of the fair value of acquired intangible assets.

### ***Restructuring, Acquisition and Related Costs***

In connection with the acquisition of Opnext, during the nine months ended March 30, 2013, we recorded \$2.6 million in legal and professional fees, and initiated a restructuring plan to integrate the businesses. Under this restructuring plan, during the three and nine months ended March 30, 2013, we recorded \$0.3 million and \$8.1 million, respectively, related to workforce reductions, which are included in restructuring, acquisition and related costs in the condensed consolidated statement of operations. During the three and nine months ended March 30, 2013, we recorded \$0.2 million related to lease cancellation and commitments. During the nine months ended March 30, 2013, we also recorded \$0.9 million related to the impairment of certain technology that is now considered redundant following the acquisition and \$0.4 million related to the write-off of net book value inventory that supported this technology during the first quarter of fiscal year 2013.

During fiscal year 2012, we initiated a restructuring plan in connection with the transfer of our Shenzhen, China manufacturing operations to Venture. We expect this transition to occur in a phased and gradual transfer of products over a three year period ending in 2015 and will result in approximately \$35 million in lower working capital requirements, net of related costs incurred. In connection with this transition, we recorded restructuring charges for employee separation charges of \$1.1 million and \$4.0 million, respectively, during the three and nine months ended March 30, 2013.

During the second quarter of fiscal year 2013, we sold our thin film filter business and interleaver product line in exchange for a total purchase price of \$27.0 million in cash. During the three and nine months ended March 30, 2013, we recorded an expense of \$0.2 million and a gain of \$25.0 million, respectively, related to this sale in the restructuring, acquisition and related costs in our condensed consolidated statement of operations. During the three months ended December 29, 2012, we recorded a gain of \$25.0 million related to this sale.

During the three months ended March 31, 2012, we recorded \$1.2 million in employee separation costs related to previously announced restructuring plans and incurred \$0.8 million in external consulting charges related to our optimization of past acquisitions. During the three months ended March 31, 2012, we also reviewed the fair value of certain remaining earnout obligations arising from the acquisition of Mintera Corporation (Mintera) and determined that the fair value of these earnouts increased by \$0.7 million based on revised estimates of revenues from Mintera products. This \$0.7 million increase in fair value was recorded as an increase in restructuring, acquisition and related expenses for the three months ended March 31, 2012.

During the nine months ended March 31, 2012, we recorded \$2.3 million in employee separation costs related to previously announced restructuring plans and incurred \$3.9 million in external consulting charges related to our optimization of past acquisitions. During the nine months ended March 31, 2012, we also reviewed the fair value of certain remaining earnout obligations arising from the acquisition of Mintera and determined that the fair value of these earnouts decreased by \$2.2 million based on revised estimates of revenues from Mintera products. This \$2.2 million decrease in fair value was recorded as a decrease in restructuring, acquisition and related expenses for the nine months ended March 31, 2012.

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### ***Flood-related (Income) Expense, Net***

In October 2011, certain areas in Thailand suffered major flooding as a result of monsoons. This flooding had a material and adverse impact on our business and results of operations. Our primary contract manufacturer, Fabrinet, suspended operations at two factories located in Chokchai, Thailand and Pinehurst, Thailand. The Chokchai factory suffered extensive flood damage and became inaccessible due to high water levels inside and surrounding the manufacturing facility. As a result of this flooding, we experienced a significant decline in products sales due to our inability or limited ability to manufacture certain Oclaro products and we incurred significant damage to our inventory and property and equipment located at the Chokchai facility.

During the three and nine months ended March 30, 2013, we recorded flood-related benefits of \$11.5 million and \$10.6 million, respectively, related to advance payments from our insurers, offset in part by professional fees and related expenses incurred in connection with our recovery efforts. In March 2013, we received an \$11.8 million advance payment from one of our insurers relating to losses we incurred due to the flooding in Thailand. This payment is a general advance from our insurer against all Thailand flood-related claims and was not specifically identified as reimbursement for any particular loss or claim. As there were no contingencies associated with this payment, we recorded this advance payment within flood-related (income) expense, net in our condensed consolidated statements of operations for the three and nine months ended March 30, 2013.

During the three months ended December 29, 2012, we recorded flood-related charges of \$0.6 million, related to professional fees and related expenses incurred in connection with our recovery efforts.

During the three months ended March 31, 2012, we recorded flood-related charges of \$2.5 million related to personnel costs, professional fees and related expenses incurred in connection with our recovery efforts, and \$0.6 million in impairment charges related to the write-off of the net book value of property and equipment based on estimates of the damage caused by the flooding. During the nine months ended March 31, 2012, we recorded flood-related charges of \$4.3 million related to personnel costs, professional fees and related expenses incurred in connection with our recovery efforts, \$4.2 million in impairment charges related to the write-off of the net book value of damaged inventory and \$3.7 million related to the write-off of the net book value of property and equipment based on estimates of the damage caused by the flooding. These charges are recorded within the operating expense caption flood-related (income) expense, net, in our condensed consolidated statement of operations for the three and nine months ended March 31, 2012. On February 2, 2012, we also received a \$6.4 million advance payment from one of our insurers relating to losses we incurred due to the flooding in Thailand. This payment is a general advance from our insurer against all Thailand flood-related claims and was not specifically identified as reimbursement for any particular loss or claim. As there were no contingencies associated with this payment, we recorded this advance payment within flood-related (income) expense, net in our condensed consolidated statements of operations for the three and nine months ended March 31, 2012.

### ***Other Income (Expense)***

Other income (expense) decreased to \$12.2 million in expense for the three months ended March 30, 2013 as compared to \$4.1 million in expense for the three months ended December 29, 2012 and \$0.6 million in expense for the three months ended March 31, 2012. This decrease was primarily due to recording a \$7.4 million loss on foreign currency translation during the three months ended March 30, 2013, as compared to recording a \$3.4 million loss on foreign currency translation during the three months ended December 29, 2012 and a \$0.3 million loss on foreign currency translation during the three months ended March 31, 2012. The foreign currency loss in the current quarter is predominantly a result of revaluing intercompany receivables denominated in Japanese yen. The decrease was also due to recording a \$1.1 million interest expense, primarily related to interest on the Convertible Notes which were issued in the second quarter of fiscal 2013 and a \$3.6 million impairment charge related to the revaluation of an investment.

Other income (expense) increased to \$11.3 million in income for the nine months ended March 30, 2013 from \$4.0 million in income for the nine months ended March 31, 2012. This increase was primarily due to recording a \$27.9 million gain on bargain purchase in connection with our acquisition of Opnext in the first quarter of fiscal year 2013, partially offset by recording a \$10.6 million loss on foreign currency translation during the nine months ended March 30, 2013, as compared to recording a \$2.4 million gain on foreign currency translation during the nine months ended March 31, 2012. The increase was also partially offset by recording a \$2.2 million interest expense, primarily related to interest on the credit facility and the Convertible Notes which were issued in the second quarter of fiscal 2013 and a \$3.6 million impairment charge related to the revaluation of an investment.



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### ***Income Tax Provision***

For the three and nine months ended March 30, 2013 and for the three months ended December 29, 2012, our income tax provisions of \$0.4 million, \$3.0 million and \$1.4 million, respectively, primarily related to our foreign operations.

For the three and nine months ended March 31, 2012, our income tax provisions of \$0.7 million and \$6.8 million, respectively, primarily related to our foreign operations. Included in our tax provision for the nine months ended March 31, 2012, is a \$4.1 million charge due to the impairment of certain net operating loss carryforwards in Switzerland.

### **RECENT ACCOUNTING STANDARDS**

See Note 2, *Recent Accounting Standards*, to our condensed consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q for information regarding the effect of new accounting pronouncements on our condensed consolidated financial statements.

### **APPLICATION OF CRITICAL ACCOUNTING POLICIES**

The discussion and analysis of our financial condition and results of operations is based on our condensed consolidated financial statements contained elsewhere in this Quarterly Report on Form 10-Q, which have been prepared in accordance with accounting principles generally accepted in the United States (U.S. GAAP). The preparation of our financial statements requires us to make estimates and judgments that affect our reported assets and liabilities, revenues and expenses and other financial information. Actual results may differ significantly from those based on our estimates and judgments or could be materially different if we used different assumptions, estimates or conditions. In addition, our financial condition and results of operations could vary due to a change in the application of a particular accounting policy.

We identified our critical accounting policies in our Annual Report on Form 10-K for the year ended June 30, 2012 (2012 Form 10-K) related to revenue recognition and sales returns, inventory valuation, business combinations, insurance recoveries, impairment of goodwill and other intangible assets, accounting for stock-based compensation and income taxes. It is important that the discussion of our operating results be read in conjunction with the critical accounting policies discussed in our 2012 Form 10-K.

### **LIQUIDITY AND CAPITAL RESOURCES**

#### ***Cash Flows from Operating Activities***

Net cash used by operating activities for the nine months ended March 30, 2013 was \$91.7 million, primarily resulting from a net loss of \$73.0 million, non-cash adjustments of \$12.1 million and a \$6.6 million decrease in cash due to changes in operating assets and liabilities. The \$6.6 million decrease in cash due to changes in operating assets and liabilities was comprised of a \$18.9 million decrease in accounts payable, a \$9.9 million increase in prepaid expenses and other current assets, a \$7.1 million decrease in accrued expenses and other liabilities, partially offset by a \$28.2 million decrease in accounts receivable and a \$1.2 million decrease in inventories. The \$12.1 million decrease in cash resulting from non-cash adjustments primarily consisted of a decrease of \$27.9 million for the bargain purchase gain related to the acquisition of Opnext, a decrease of \$24.8 million related to the gain on the sale of the thin film filter business and interleaver product line and \$1.5 million from the amortization of deferred gain from sales-leaseback transactions, partially offset by \$32.1 million in depreciation and amortization, \$5.4 million of expense related to stock-based compensation, \$3.6 million related to an impairment charge on an investment and \$0.9 million related to the impairment of certain intangibles.

Net cash used by operating activities for the nine months ended March 31, 2012 was \$23.9 million, primarily resulting from a net loss of \$62.6 million, partially offset by \$22.5 million of non-cash adjustments and a \$16.2 million increase in cash due to changes in operating assets and liabilities. The \$22.5 million of non-cash adjustments was primarily comprised of \$16.6 million of expense related to depreciation and amortization, \$7.9 million of expense related to our non-cash flood-related impairments and \$4.9 million of expense related to stock-based compensation, partially offset by \$2.2 million due to the revaluation of the Mintera earnout liability, \$2.2 million gain on the sale of an investment, \$1.9 million gain from the sale of certain assets related to a legacy product and \$0.7 million from the amortization of deferred gain from a sales-leaseback transaction. The \$16.2 million increase in cash due to changes in operating assets and liabilities was primarily comprised of a \$21.4 million decrease in accounts receivable, a \$9.7 million decrease in inventory, a \$1.3 million increase in accrued expenses and other liabilities, a \$0.8 million decrease in prepaid expenses and other current assets, partially offset by a \$17.0 million decrease in accounts payable and a \$0.1 million increase in other non-current assets.



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### ***Cash Flows from Investing Activities***

Net cash provided by investing activities for the nine months ended March 30, 2013 was \$52.6 million, primarily consisting of \$36.1 million cash acquired in the acquisition of Opnext, \$26.0 million in proceeds from the sale of the thin film filter business and interleaver product line, and \$3.7 million reduction in restricted cash, partially offset by \$13.2 million used in capital expenditures.

Net cash used in investing activities for the nine months ended March 31, 2012 was \$9.6 million, primarily consisting of \$15.9 million used in capital expenditures, partially offset by \$3.4 million in proceeds from the sale of an investment and \$2.9 million in proceeds from the sale of certain assets related to a legacy product.

### ***Cash Flows from Financing Activities***

Net cash provided by financing activities for the nine months ended March 30, 2013 was \$24.5 million, primarily consisting of \$22.8 million in proceeds from the sale of convertible notes, \$15.3 million in borrowings under our revolving credit facility and \$1.7 million received from the issuance of common stock through stock option exercises and our employee stock purchase plan, partially offset by \$8.6 million in payments in connection with the remaining earnout obligations related to our acquisition of Mintera, \$5.5 million in payments on capital lease obligations and \$1.1 million repayments on a note payable and revolving credit facility.

Net cash provided by financing activities of \$25.6 million for the nine months ended March 31, 2012 primarily consisted of \$25.5 million in borrowings under our revolving credit facility and \$0.1 million in proceeds from the issuance of common stock through stock option exercises.

### ***Effect of Exchange Rates on Cash and Cash Equivalents for the Nine months Ended March 30, 2013 and March 31, 2012***

The effect of exchange rates on cash and cash equivalents for the nine months ended March 30, 2013 was an increase of \$12.5 million, primarily consisting of \$3.5 million in net gain due to the revaluation of foreign currency cash balances to the functional currency of the respective subsidiaries and from gains of approximately \$4.6 million related to the revaluation of U.S. dollar denominated operating intercompany payables and receivables of our foreign subsidiaries.

The effect of exchange rates on cash and cash equivalents for the nine months ended March 31, 2012 was a decrease of \$4.3 million, primarily consisting of \$0.6 million loss due to the revaluation of foreign currency cash balances to the functional currency of the respective subsidiaries and from a loss of approximately \$3.7 million related to the revaluation of U.S. dollar denominated operating intercompany payables and receivables of our foreign subsidiaries.

### ***Credit Line and Notes***

As of March 30, 2013, we had an \$80.0 million senior secured revolving credit facility with Wells Fargo Capital Finance, Inc. and other lenders (the Credit Agreement) with an expiration date of November 2, 2017. See Note 7, *Credit Line and Notes*, for additional information regarding this credit facility.

As of March 30, 2013 and June 30, 2012, there was \$40.0 million and \$25.5 million, respectively, outstanding under the Credit Agreement and we were in compliance with all covenants. At March 30, 2013 and June 30, 2012, there were \$30,000 and \$0.1 million, respectively, in outstanding standby letters of credit secured under the Credit Agreement. These letters of credit expire at various intervals through June 2015.

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On May 6, 2013, Parent, Borrower, the Lenders, the Agent and PECM Strategic Funding LP and Providence TMT Debt Opportunity Fund II LP (the Term Lenders) entered into Amendment Number Two to the Credit Agreement and the associated guaranties and security agreements (the Amendment), which amended the Credit Agreement in pertinent part by: (i) adding a \$25 million term loan (the Term Loan) to be provided by the Term Lenders; (ii) reducing the revolving credit facility from \$80 million to \$50 million (to be further reduced on a dollar-for-dollar basis by an amount equal to the net proceeds of certain asset sale transactions that the Parent may undertake in the future), eliminating the Borrower's option to increase the revolving credit facility to \$100 million and implementing an availability block under the revolving credit facility of at least \$10 million; (iii) removing the financial covenants so that Borrower is not required to maintain a minimum of \$15 million of availability under the revolving credit facility or \$15 million in qualified cash balances; (iv) adding an affirmative covenant that Borrower shall have consummated one or more asset sales in the very near term and with a minimum threshold of net proceeds as set forth in the Amendment, and (v) providing for payments and proceeds of asset sales to be applied to repay the credit facility and the Term Loan (with the first \$20.0 million of such proceeds being applied to repay Wells Fargo Capital Finance, Inc. and Silicon Valley Bank and the next \$25.0 being applied to repay Providence and the remaining proceeds being used to repay Wells Fargo Capital Finance, Inc. and Silicon Valley Bank all amounts outstanding under the credit facility), and events of default relating thereto. If any event of default were to occur, including a failure to comply with the covenant regarding asset sales described above, such an event of default would (unless waived by the Lenders) entitle the Lenders, upon notice to the Borrower and the Parent, to declare the Term Loan and all other amounts owing under the Credit Agreement, immediately due and payable.

The Term Loan is payable in full on May 5, 2014. There are no amortization payments, but the Term Loan must be repaid with the proceeds of certain asset sale transactions as described above.

In connection with the Amendment, and as further consideration for the Term Lenders providing the term loan, Parent issued the Term Lenders, or an affiliate thereof, warrants (the Warrants) to purchase shares of the Parent's common stock, par value \$0.01 per share (the Common Stock). The holders of the Warrants are entitled to exercise the Warrants for 1,836,000 shares of Common Stock at an exercise price equal to \$1.50 per share (as adjusted from time to time, as provided in the Warrant Certificate representing the Warrants) for a period of one (1) year starting on the date of issuance.

The Borrower paid the revolving lenders an amendment fee of \$500,000 and the Term Lenders a closing fee of \$2,125,000. Borrower may only prepay the principal amount of the Term Loan, in whole or in part, with the prior written consent of the Required Lenders (as defined in the Amendment). Any prepayments made on the Term Loan obligations after six months following the effective date of the term loan will be at 105% of the related obligations.

Interest on the Term Loan obligations accrues at a per annum rate equal to the sum of: (A) the PIK Term Loan Interest Rate, with such accrued interest to be capitalized quarterly and added to the outstanding principal balance of the Term Loan, and (B) the Cash Term Loan Interest Rate. The PIK Term Loan Interest Rate is 2.0% beginning on the effective date of the Term Loan (the Effective Date) up to but excluding the date six months thereafter, then it is 4.0% until the date twelve months after the Effective Date and then it is 5.0%. The Cash Term Loan Interest Rate is 7.0% beginning on the Effective Date up to but excluding the date six months thereafter, then it is 8.5% until the date twelve months after the Effective Date and then it is 10.0%.

No changes were made to the interest rates or commitment fees payable under the revolving credit facility.

The obligations of the Borrower under the Credit Agreement are guaranteed by the Parent and all significant subsidiaries of the Parent and the Borrower (collectively, the Guarantors), and are secured, pursuant to two security agreements by substantially all of the assets of the Borrower and the Guarantors, including a pledge of the capital stock holdings of the Borrower and certain Guarantors in their direct subsidiaries.

Borrowings made under the Credit Agreement are subject to the terms and conditions of the Credit Agreement, as described in the Current Reports on Form 8-K filed by Parent with the Securities and Exchange Commission on November 5, 2012 and January 29, 2013, as such terms and conditions have been amended by the Amendment.

In connection with the acquisition of Opnext, we assumed a 1.5 billion Japanese yen note payable to The Sumitomo Trust Bank (Sumitomo). The note is due monthly unless renewed by Sumitomo. As of March 30, 2013, the outstanding loan balance was \$15.6 million, based on the exchange rate on March 30, 2013. Interest is paid monthly at the Tokyo Interbank Offered Rate plus a premium, which for our nine months ended March 30, 2013, was 1.7 percent per annum. As of March 30, 2013, we have \$15.6 million in restricted cash in our condensed consolidated balance sheet related to our note payable to Sumitomo.



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On December 14, 2012, we closed a private placement of \$25.0 million aggregate principal amount 7.50% Exchangeable Senior Secured Second Lien Notes due 2018 (Convertible Notes). The sale of the Convertible Notes resulted in net proceeds of approximately \$22.8 million. As of March 30, 2013, the net carrying value of the liability component was \$23.7 million, the unamortized value of the debt discount was \$1.2 million and the estimated fair value of the contingent obligation for the make-whole premium was valued at \$0.1 million. Interest on the Convertible Notes is payable semi-annually in arrears on June 15 and December 15 of each year, beginning on June 15, 2013. During the three and nine months ended March 30, 2013, we recorded \$0.5 million and \$0.6 million, respectively, in interest expense related to these Convertible Notes. See Note 7, *Credit Line and Notes*, for additional information regarding the Convertible Notes.

### ***Future Cash Requirements***

We have experienced lower than expected year-to-date sales volume and our near-term liquidity has been negatively impacted, which will require us to secure additional sources of cash in order to continue to operate our business effectively. We have incurred operating losses and generated negative cash flows for the fiscal year. As of March 30, 2013, we held \$80.5 million in cash and short-term investments, comprised of \$59.6 million in cash and cash equivalents, \$16.9 million in restricted cash and \$4.0 million of short-term investments; and we had working capital of \$124.4 million. Given the reduction in sales, delays in production of new programs, the continuing costs of our previously announced restructuring activities and a soft macroeconomic commercial situation, we anticipate that our net loss for the fourth quarter will be equal to, or possibly greater than, our net loss for the third quarter, further reducing the amount of cash available to us to fund our continued operations. As a result, we will be required to secure additional sources of cash sooner than we had previously expected (and likely by the end of the first quarter of fiscal 2014) in order to fund our continued operations. On May 7, 2013 we secured one such additional source of cash, a short term bridge loan from Providence Equity of \$25 million (with net proceeds to us of \$20.5 million after discounts and expenses). In order to obtain this loan, we amended our Credit Agreement to add Providence as a term lender under that agreement. In connection with this amendment, we agreed to complete certain asset sales and use the proceeds to repay amounts we have borrowed under the Credit Agreement in the very near term. We are actively pursuing potential asset sales with multiple potential parties, but we can make no assurances that we will be successful concluding the assets sales we have agreed to complete, that we will be able to repay the amounts we have borrowed under the Credit Agreement as required and that we will be able to obtain sufficient additional cash to operate our business over the next twelve months. If we fail to raise the additional cash required, through asset sales or from other sources, we may not be able to continue as a going concern. For additional information on the risks we face related to future cash requirements, see Item 1A. Risk Factors under **Risks Related to Our Business**. We have a history of large operating losses and we may not be able to achieve profitability in the future and maintain sufficient levels of liquidity.

In addition to our current cash balances, net proceeds of \$20.5 million received from Providence Equity on May 7, 2013 under our Credit Agreement (as amended and restated on May 6, 2013), other amounts expected to be available under our Credit Agreement, which are based on a percentage of eligible accounts receivable (as defined in the Credit Agreement), and amounts anticipated to be received pursuant to our Equipment and Inventory Purchase Agreement with Venture Corporation Ltd, we also expect to receive additional payments for flood-related claims, although the parties have not yet agreed to pay these claims and we are unable to predict the amount that we may ultimately receive for these claims or when or if we will receive any such payments. We are also developing plans to restructure our operations to a lower operating income break-even level.

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In the event that any of the sources of liquidity described in the preceding paragraphs are for any reason, not available in a timely manner or in the event that we need additional liquidity beyond our current expectations, such as to fund future growth or strengthen our balance sheet or to fund the cost of restructuring activities we may find necessary to lower our operating income break-even level, we will continue to explore other sources of additional liquidity. These additional sources of liquidity could include one, or a combination, of the following: (i) issuing equity securities, (ii) incurring indebtedness secured by our assets, (iii) issuing debt and/or convertible debt securities, or (iv) selling product lines, other assets and/or portions of our business. There can be no guarantee that we will be able to raise additional funds on terms acceptable to us, or at all.

### ***Off-Balance Sheet Arrangements***

We indemnify our directors and certain employees as permitted by law, and have entered into indemnification agreements with our directors and executive officers. We have not recorded a liability associated with these indemnification arrangements, as we historically have not incurred any material costs associated with such indemnification obligations. Costs associated with such indemnification obligations may be mitigated by insurance coverage that we maintain, however, such insurance may not cover any, or may cover only a portion of, the amounts we may be required to pay. In addition, we may not be able to maintain such insurance coverage in the future.

We also have indemnification clauses in various contracts that we enter into in the normal course of business, such as indemnification in favor of customers in respect of liabilities they may incur as a result of purchasing our products should such products infringe the intellectual property rights of a third party. We have not historically paid out any material amounts related to these indemnifications; therefore, no accrual has been made for these indemnifications.

Other than as set forth above, we are not currently party to any material off-balance sheet arrangements.

## **ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

### **INTEREST RATES**

We finance our operations through a mixture of issuances of equity securities, finance leases, working capital and by drawing on our Credit Agreement. We have exposure to interest rate fluctuations on our cash deposits and for amounts borrowed under our Credit Agreement, note with Sumitomo, Convertible Notes and through our capital leases. At March 30, 2013, there was \$40.0 million outstanding under our Credit Agreement at an average interest rate of 3.0 percent per annum, \$15.6 million outstanding under our yen-denominated loan with Sumitomo at an average interest rate of 1.7 percent per annum, \$25.0 million of Convertible Notes outstanding with an interest rate of 7.5 percent and \$20.9 million outstanding under capital leases. An increase in our average interest rate by 1.0 percent would increase our annual interest expense by \$1.0 million.

We monitor our interest rate risk on cash balances primarily through cash flow forecasting. Cash that is surplus to immediate requirements is invested in short-term deposits with banks accessible with one day's notice and invested in overnight money market accounts.

### **FOREIGN CURRENCY**

As our business is multinational in scope, we are subject to fluctuations based upon changes in the exchange rates between the currencies in which we collect revenues and pay expenses. In the future, we expect that a majority of our revenues will continue to be denominated in U.S. dollars, while a significant portion of our expenses will continue to be denominated in U.K. pounds sterling and the Swiss franc. In addition, with the acquisition of Opnext, we have an increasing portion of our expenses denominated in Japanese yen. Fluctuations in the exchange rate between the U.S. dollar, the U.K. pound sterling, the Swiss franc and the Japanese yen and, to a lesser extent, other currencies in which we collect revenues and pay expenses, could affect our operating results. This includes the Chinese yuan, the Korean won, the Israeli shekel and the Euro in which we pay expenses in connection with operating our facilities in Shenzhen and Shanghai, China; Daejeon, South Korea; Jerusalem, Israel and San Donato, Italy. To the extent the exchange rate between the U.S. dollar and these currencies were to fluctuate more significantly than experienced to date, our exposure would increase.

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As of March 30, 2013, our U.K. subsidiary had \$71.7 million, net, in U.S. dollar denominated operating intercompany payables, \$52.4 million in U.S. dollar denominated accounts receivable and payable, net, related to sales to external customers and purchases from suppliers, and \$22.2 million in U.S. dollar denominated cash accounts. It is estimated that a 10 percent fluctuation in the U.S. dollar relative to the U.K. pound sterling would lead to a profit of \$0.3 million (U.S. dollar strengthening), or loss of \$0.3 million (U.S. dollar weakening) on the translation of these receivables and other cash balances, which would be recorded as gain (loss) on foreign exchange in our condensed consolidated statement of operations. As of March 30, 2013, our Japan subsidiary had \$38.1 million, net, in U.S. dollar denominated operating intercompany payables, \$4.5 million in U.S. dollar denominated accounts payable, net of accounts receivable, related to sales to external customers and purchases from suppliers, and \$19.5 million in U.S. dollar denominated cash and restricted cash accounts. It is estimated that a 10 percent fluctuation in the U.S. dollar relative to the Japanese yen would lead to a profit of \$2.3 million (U.S. dollar weakening), or loss of \$2.3 million (U.S. dollar strengthening) on the translation of these balances, which would be recorded as gain (loss) on foreign exchange in our consolidated statement of operations.

**ITEM 4. CONTROLS AND PROCEDURES**

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures as of March 30, 2013. The term “disclosure controls and procedures,” as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, or the Exchange Act, means controls and other procedures of a company that are designed to ensure that information required to be disclosed by the company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company’s management, including its principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Based on the evaluation of our disclosure controls and procedures as of March 30, 2013, our Chief Executive Officer and Chief Financial Officer have concluded that, as of such date, our disclosure controls and procedures were effective at the reasonable assurance level.

There was no change in our internal control over financial reporting during the three months ended March 30, 2013 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

**PART II. OTHER INFORMATION****ITEM 1. LEGAL PROCEEDINGS**

On December 21, 2012, Labyrinth Optical Technologies LLC filed a complaint against us in United States District Court for the Central District of California alleging that certain coherent transponder modules, coherent receivers and DQPSK transceivers sold by us infringe Labyrinth Optical U.S. patent Nos. 7,599,627 and 8,103,173. Labyrinth Optical is seeking damages and injunctive relief. A scheduling hearing is set for June 3, 2013. We are unable at this time to estimate the effects of this lawsuit on our financial position, results of operations or cash flows.

On May 19, 2011, Curtis and Charlotte Westley filed a purported class action complaint in the United States District Court for the Northern District of California, against us and certain of our officers and directors. The Court subsequently appointed the Connecticut Laborers’ Pension Fund (Pension Fund) as lead plaintiff for the putative class. On April 26, 2012, the Pension Fund filed a second amended complaint, captioned as Westley v. Oclaro, Inc., No. 11 Civ. 2448 EMC, allegedly on behalf of persons who purchased our common stock between May 6 and October 28, 2010, alleging that we and certain of our officers and directors issued materially false and misleading statements during this time period regarding our current business and financial condition, including projections for demand for our products, as well as our revenues, earnings, and gross margins, for the first quarter of fiscal year 2011 as well as the full fiscal year. The complaint alleges violations of section 10(b) of the Securities Exchange Act and Securities and Exchange Commission Rule 10b-5, as well as section 20(a) of the Securities Exchange Act. The complaint seeks damages and costs of an unspecified amount. On September 21, 2012, the Court dismissed the second amended complaint with leave to amend. After the Pension Fund moved for reconsideration, on January 10, 2013, the Court allowed plaintiffs to take discovery regarding statements made in May and June 2010. The Court also ordered defendants to move for summary judgment by June 13, 2013 on the issue of defendants’ scienter with respect to statements made in May and June 2010, and further ordered that the motion be heard on July 18, 2013. On March 1, 2013 the Pension Fund filed a third amended complaint, attempting to cure pleading deficiencies with regard to statements allegedly made from July to October 2010. On April 1, 2013, defendants moved to dismiss the third amended complaint with respect to the statements made from July to October 2010. Oral argument on the motion to dismiss is scheduled for May 16, 2013. Discovery has commenced, and no trial has been scheduled in this action. We intend to defend this litigation vigorously. We are unable at this time to estimate the effects of this lawsuit on our financial position, results of operations or cash flows.





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On June 10, 2011, a purported shareholder, Stanley Moskal, filed a purported derivative action in the Superior Court for the State of California, County of Santa Clara, against us, as nominal defendant, and certain of our current and former officers and directors, as defendants. The case is styled Moskal v. Couder, No. 1:11 CV 202880 (Santa Clara County Super. Ct. filed June 10, 2011). Four other purported shareholders, Matteo Guindani, Jermaine Coney, Jefferson Braman and Toby Aguilar, separately filed substantially similar lawsuits in the United States District Court for the Northern District of California on June 27, June 28, July 7 and July 26, 2011, respectively. By Order dated September 14, 2011, the Guindani, Coney, and Braman actions were consolidated under In re Oclaro, Inc. Derivative Litigation, Lead Case No. 11 Civ. 3176 EMC. On October 5, 2011, the Aguilar action was voluntarily dismissed. Each remaining purported derivative complaint alleges that Oclaro has been, or will be, damaged by the actions alleged in the Westley complaint, and the litigation of the Westley action, and any damages or settlement paid in the Westley action. Each purported derivative complaint alleges counts for breaches of fiduciary duty, waste, and unjust enrichment. Each purported derivative complaint seeks damages and costs of an unspecified amount, as well as injunctive relief. By Order dated March 6, 2012, the parties in the Moskal action agreed that defendants shall not be required to respond to the original complaint. By Order dated February 27, 2013, the parties in the Moskal action agreed that plaintiff would serve an amended complaint no later than 30 days after the Court in the Westley action rules on defendants' motion to dismiss the third amended complaint in the Westley action and the stay of discovery would remain in effect until further order of the Court or agreement by the parties, provided, however, that they obtain discovery produced in the Westley Action. By Order dated March 12, 2013, the parties to In re Oclaro, Inc. Derivative Litigation agreed to stay all proceedings until such time as (a) the defendants file an answer to any complaint in the Westley action; or (b) the Westley action is dismissed in its entirety with prejudice, provided, however, that they obtain discovery produced in the Westley Action. No trial has been scheduled in any of these actions. We are unable at this time to estimate the effects of these lawsuits on our financial position, results of operations or cash flows.

On May 27, 2011, Opnext Japan filed a complaint against Furukawa in the Tokyo District Court alleging that certain laser diode modules sold by Furukawa infringe Opnext Japan's Japanese patent No. 3,887,174. Opnext Japan is seeking an injunction as well as damages in the amount of 100.0 million Japanese yen.

On August 5, 2011, Opnext Japan filed a complaint against Furukawa in the Tokyo District Court alleging that certain integratable tunable laser assemblies sold by Furukawa infringe Opnext Japan's Japanese patent No. 4,124,845. Opnext Japan is seeking an injunction as well as damages in the amount of 200.0 million Japanese yen.

On September 2, 2011, Tyco Electronics Subsea Communications, LLC (Tyco) filed a complaint against Opnext, Inc. in the Supreme Court of the State of New York, alleging that Opnext, Inc. failed to meet certain obligations owed to Tyco pursuant to a non-recurring engineering development agreement entered into between Opnext, Inc. and Tyco. The complaint sought contract damages in an amount not less than \$1 million, punitive damages, costs and attorneys' fees and such other relief as such court deemed just and proper. Opnext, Inc. filed a motion to dismiss this complaint on October 14, 2011. By decision and order dated August 13, 2012, the Court dismissed Tyco's complaint in its entirety. Tyco has filed a notice of appeal from the decision and order but has not yet perfected the appeal. We are unable at this time to estimate the effects of any possible appeal of this lawsuit on our financial position, results of operations or cash flows.

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### **ITEM 1A. RISK FACTORS**

*Investing in our securities involves a high degree of risk. The risks described below are not the only ones facing us. Additional risks not currently known to us or that we currently believe are immaterial also may impair our business, operations, liquidity and stock price materially and adversely. You should carefully consider the risks and uncertainties described below in addition to the other information included or incorporated by reference in this Quarterly Report on Form 10-Q. If any of the following risks actually occur, our business, financial condition or results of operations would likely suffer. In that case, the trading price of our common stock could fall and you could lose all or part of your investment.*

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

***We have a history of large operating losses and we may not be able to achieve profitability in the future and maintain sufficient levels of liquidity.***

We have historically incurred losses and negative cash flows from operations since our inception. As of March 30, 2013, we had an accumulated deficit of \$1,265.6 million. We have incurred operating losses and negative cash flows for the current fiscal year, and we incurred losses from continuing operations for the years ended June 30, 2012 and July 2, 2011, of \$66.5 million and \$46.4 million, respectively. Similarly, prior to our acquisition of Opnext, Opnext had a history of net losses and negative cash flows. For the fiscal years ended March 31, 2012 and 2011, Opnext incurred net losses of \$84.4 million and \$31.8 million, respectively.

We have experienced lower than expected year-to-date sales volume and our near-term liquidity has been negatively impacted, which will require us to secure additional sources of cash in order to continue to operate our business effectively. We anticipate that the quarterly loss in the fourth quarter may be at least as large as what we have seen over the past year, further eroding our cash position. We may not be able to achieve profitability in any future periods.

As of March 30, 2013, we held \$80.5 million in cash and short-term investments, comprised of \$59.6 million in cash and cash equivalents, \$16.9 million in restricted cash and \$4.0 million of short-term investments; and we had working capital of \$124.4 million. Given the reduction in sales, delays in production of new programs, the continuing costs of our previously announced restructuring activities and a soft macroeconomic commercial situation, we anticipate that our net loss for the fourth quarter will be equal to, or possibly greater than, our net loss for the third quarter, further reducing the amount of cash available to us to fund our continued operations. As a result, we will be required to secure additional sources of cash sooner than we had previously expected (and likely by the end of the first quarter of fiscal 2014) in order to fund our continued operations. On May 7, 2013 we secured one such additional source of cash, a short term bridge loan from Providence Equity of \$25 million (with net proceeds to us of \$20.5 million after discounts and expenses). In order to obtain this loan, we amended our Credit Agreement to add Providence as a term lender under that agreement. In connection with this amendment, we agreed to complete certain asset sales and use the proceeds to repay amounts we have borrowed under the Credit Agreement in the very near term. We are actively pursuing potential asset sales with multiple potential parties, but we can make no assurances that we will be successful concluding the assets sales we have agreed to complete, that we will be able to repay the amounts we have borrowed under the Credit Agreement as required and that we will be able to obtain sufficient additional cash to operate our business over the next twelve months. If we are unable to raise additional cash through assets sales or from other sources, or otherwise unable to continue as a going concern, we may be forced to further restructure our operations, which could result in our stockholders losing a substantial portion, or all, of their investment in the Company.

The optical communications industry is subject to significant operational fluctuations. In order to remain competitive we incur substantial costs associated with research and development, qualification, production capacity and sales and marketing activities in connection with products that may be purchased, if at all, long after we have incurred such costs. In addition, the rapidly changing industry in which we operate, the length of time between developing and introducing a product to market, frequent changing customer specifications for products, customer cancellations of products and general down cycles in the industry, among other things, make our prospects difficult to evaluate. We are not generating cash flow from operations, and it is possible that we may not generate sufficient cash flow from operations, or be able to draw down on our \$50.0 million senior secured revolving credit facility, to the extent we anticipate, or at all, or have to pay down on those facilities; obtain insurance reimbursement proceeds in the amount and within the time frame that we expect; conclude additional strategic transactions; or otherwise have sufficient capital resources to meet our future capital or liquidity needs. We may also decide it is prudent to undertake restructuring activities to reduce our cost base and lower our operating income break-even level, and those efforts may require financing which we may or may not be able to generate.

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If we raise funds through the issuance of equity, equity-linked or convertible debt securities, our stockholders may be significantly diluted, and these newly-issued securities may have rights, preferences or privileges senior to those of securities held by existing stockholders. If we raise funds through the issuance of debt instruments, the agreements governing such debt instruments may contain covenant restrictions that limit our ability to, among other things: (i) incur additional debt, assume obligations in connection with letters of credit, or issue guarantees; (ii) create liens; (iii) make certain investments or acquisitions; (iv) enter into transactions with our affiliates; (v) sell certain assets; (vi) redeem capital stock or make other restricted payments; (vii) declare or pay dividends or make other distributions to stockholders; and (viii) merge or consolidate with any entity. We cannot assure you that additional financing will be available on terms favorable to us, or at all. If adequate funds are not available or are not available on acceptable terms, if and when needed, our ability to fund our operations, develop or enhance our products, or otherwise respond to competitive pressures and operate effectively could be significantly limited.

***We may undertake mergers or acquisitions, such as our acquisition of Opnext, Inc. (Opnext), that do not prove successful, which would materially and adversely affect our business, prospects, financial condition and results of operations.***

From time to time we consider mergers or acquisitions, collectively referred to as acquisitions, of other businesses, assets or companies that would complement our current product offerings, enhance our intellectual property rights or offer other competitive opportunities. For example, on March 26, 2012, we entered into an Agreement and Plan of Merger and Reorganization with Opnext, which was completed on July 23, 2012. However, in the future, we may not be able to identify suitable acquisition candidates at prices we consider appropriate. In addition, we are in an industry that is actively consolidating and, as a result, there is no guarantee that we will successfully and satisfactorily bid against third parties, including competitors, when we identify a critical target we want to acquire.

We cannot readily predict the timing or size of our future acquisitions, or the success of our recent or future acquisitions. Failure to successfully implement our acquisition plans could have a material adverse effect on our business, prospects, financial condition and results of operations. Even successful acquisitions could have the effect of reducing our cash balances, diluting the ownership interests of existing stockholders or increasing our indebtedness. For example, in our acquisition of Opnext we issued approximately 38.4 million newly issued shares of our common stock to the former stockholders of Opnext.

In addition, during the first quarter of fiscal year 2012, we issued 0.9 million shares of our common stock related to the settlement of our Xtellus escrow liability. In October 2011, we paid \$0.5 million in cash and issued 0.8 million shares of our common stock to pay earnout obligations related to our acquisition of Mintera. In the fourth quarter of fiscal year 2012, we paid \$2.2 million to settle a portion of our Mintera earnout obligations, and settled the remaining \$8.6 million obligation in cash in the first quarter of fiscal year 2013.

Our acquisition of Opnext and other acquisitions involve a number of other potential risks to our business, including the following, any of which could harm our business:

failure to realize the potential financial or strategic benefits of the acquisition;

increased costs associated with merged or acquired operations;

increased indebtedness obligations;

economic dilution to gross and operating profit (loss) and earnings (loss) per share;

failure to successfully further develop the combined, acquired or remaining technology, which could, among other things, result in the impairment of amounts recorded as goodwill or other intangible assets;

unanticipated costs and liabilities and unforeseen accounting charges;

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difficulty in integrating product offerings;

difficulty in coordinating and rationalizing research and development activities to enhance introduction of new products and technologies with reduced cost;

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difficulty in coordinating and integrating the manufacturing activities of our acquired businesses, including with respect to third-party manufacturers, including executing a production capacity ramp up of our South Korea facility and our contract manufacturers to support the potential revenue demand for the WSS-related products of Xtellus, and transferring certain production of Mintera products to our internal facilities, in addition to coordination, integration or transfers of any manufacturing activities associated with our acquisition of Opnext;

delays and difficulties in delivery of products and services;

failure to effectively integrate or separate management information systems, personnel, research and development, marketing, sales and support operations;

difficulty in maintaining internal control procedures and disclosure controls that comply with the requirements of the Sarbanes-Oxley Act of 2002, or poor integration of a target's procedures and controls;

difficulty in preserving important relationships of our acquired businesses and resolving potential conflicts between business cultures;

uncertainty on the part of our existing customers, or the customers of an acquired company, about our ability to operate effectively after a transaction, and the potential loss of such customers;

loss of key employees;

difficulty in coordinating the international activities of our acquired businesses, including Opnext, which has substantial operations in Japan as well as the United States, and which uses contract manufacturing suppliers in Southeast Asia;

the effect of tax laws due to increasing complexities of our global operating structure;

greater exposure to the impact of foreign currency changes on our business;

the effect of employment law or regulations or other limitations in foreign jurisdictions that could have an impact on timing, amounts or costs of achieving expected synergies; and

substantial demands on our management as a result of these transactions that may limit their time to attend to other operational, financial, business and strategic issues.

Our integration with acquired businesses has been and will continue to be a complex, time-consuming and expensive process. We cannot assure you that we will be able to successfully integrate these businesses in a timely manner, or at all, or that any of the anticipated benefits from our acquisition of Opnext or previous acquisitions will be realized. There are inherent challenges in integrating the operations of geographically diverse companies. We may have difficulty, and may incur unanticipated expenses related to, integrating management and personnel from our acquisition of Opnext and previously acquired entities with our management and personnel. Our failure to achieve the strategic objectives of our acquisition of Opnext or previous acquisitions could have a material adverse effect on our revenues, expenses and our other operating results and cash resources, and could result in us not achieving the anticipated potential benefits of these transactions. In addition, we cannot assure you that the growth rate of the combined company will equal the historical growth rate experienced by any of the companies that we have acquired including Opnext. Comparable risks would accompany any divestiture of business or assets we might undertake.

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In addition, even if we successfully integrate the operations of Opnext and other companies that we acquire in the future, we cannot predict with certainty which strategic, financial or operating synergies or other benefits, if any, will actually be achieved from our acquisition, the timing of any such benefits, or whether those benefits which have been achieved will be sustainable on a long-term basis. Our failure to successfully integrate the operations of Opnext would likely have a material and adverse impact on our business, prospects, financial condition and results of operations.

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### ***Our revenues and operating results are likely to fluctuate significantly as a result of factors that are outside our control.***

Our revenues and operating results are likely to fluctuate significantly in the future as a result of factors that are outside our control. The timing of order placement, size of orders and satisfaction of contractual customer acceptance criteria, changes in the pricing of our products due to competitive pressures as well as order or shipment delays or deferrals, with respect to our products, may cause material fluctuations in revenues. Our lengthy sales cycle, which may extend to more than one year, may cause our revenues and operating results to vary from period to period and it may be difficult to predict the timing and amount of any variation. Delays or deferrals in purchasing decisions by our customers may increase as we develop new or enhanced products for new markets, including data communications, industrial, research, consumer and biotechnology markets. Purchase decisions by our customers are also impacted by the capital expenditure plans of the global telecom carriers, which tend to be the primary customers of our customers. Our current and anticipated future dependence on a small number of customers increases the revenue impact of each such customer's decision to delay or defer purchases from us, or decision not to purchase products from us. For example, during the second half of fiscal 2012, our revenues were adversely impacted by a significant change in demand expectations from a particular major customer. Our expense levels in the future will be based, in large part, on our expectations regarding future revenue sources and, as a result, operating results for any quarterly period in which material orders fail to occur, or are delayed or deferred, could vary significantly. Because our business is capital intensive, significant fluctuations in our revenues can have a significant adverse impact on our operating results.

### ***We may not realize the anticipated benefits from the transition of our Shenzhen assembly and test operations, and the corresponding long term supply agreement, with Venture.***

In March 2012, we entered into a definitive agreement with Venture Corporation Limited (Venture) to transfer our Shenzhen final assembly and test operations to Venture's Malaysia facility in a phased and gradual transfer of products over a period of three years. In conjunction with this agreement, we entered into a five-year supply agreement with Venture to manufacture and supply us with certain products that were previously manufactured at our Shenzhen facility. There can be no assurance that the transition of our Shenzhen assembly and test operations and the corresponding long term supply agreement with Venture will result in the benefits that we expect, or that revenues will not be adversely impacted during the transition period. There can be no assurance that we will realize our initial estimate of \$35 million in lower working capital requirements, net of related costs incurred, due to the outsourcing of these activities.

On March 28, 2012, shortly after announcing this agreement, certain of our employees in Shenzhen initiated a work stoppage up to and including April 4, 2012. Although we negotiated a resolution to this work stoppage, there can be no assurance that work stoppages will not arise in the future having a material adverse impact on our production output and/or the levels and gross margins of the corresponding product revenues supported by the production output, and/or increasing the net costs of executing the transfer to Venture. Any such work stoppage may adversely impact our revenues and our ability to deliver products to our customers.

### ***We initiated plans to relocate our operations located in Totsuka, Japan. Our business may experience disruption due to this planned relocation.***

We initiated plans to relocate our manufacturing and research and development facilities, as well as our administrative offices, from Totsuka, Japan to a facility we leased from Yokogawa Electric Corporation in Sagami-hara-shi, Kanagawa Prefecture, Japan. While we have completed the first stage of this transition, there can be no assurance that the completion of such relocation activities will not adversely impact our production capacity or manufacturing yields or divert management's attention from the day-to-day operations of our business, any of which could adversely affect our business, results of operations and cash flows.

### ***We depend on a limited number of suppliers who could disrupt our business if they stopped, decreased, delayed or were unable to meet our demand for shipments of their products.***

We depend on a limited number of suppliers of raw materials and equipment used to manufacture our products. We currently also depend on a limited number of contract manufacturers, principally Fabrinet in Thailand, to manufacture certain of our products. We will also increasingly depend on Venture as we transfer our Shenzhen assembly and test operations in a phased and gradual transfer of products to Venture. Some of these suppliers are sole sources. We typically have not entered into long-term agreements with our suppliers other than Fabrinet and Venture, therefore, these suppliers generally may stop supplying us materials and equipment at any time. Our reliance on a sole supplier or limited number of suppliers could result in delivery problems, reduced control over product pricing and quality, and an inability to identify and qualify another supplier in a timely manner. Given the recent macroeconomic downturn, some of our suppliers that may be small or undercapitalized may experience financial difficulties that could prevent them from supplying us materials and equipment. In addition, our suppliers, including our sole source suppliers, may experience manufacturing delays or shut downs due to circumstances beyond their control such as earthquakes, floods, fires or other natural disasters.





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Fabrinet's manufacturing operations are located in Thailand. In October 2011, due to flooding in Thailand, Fabrinet suspended operations at both of their factories that supply us with finished goods. Thailand has also been subject to political unrest in the recent past, including the temporary interruption of service at one of its international airports, and may again experience such political unrest in the future. If Fabrinet is unable to supply us with materials or equipment, or if they are unable to ship our materials or equipment out of Thailand due to future flooding or political unrest, this could materially adversely affect our ability to fulfill customer orders and our results of operations.

Any supply deficiencies relating to the quality or quantities of materials or equipment we use to manufacture our products could materially adversely affect our ability to fulfill customer orders and our results of operations. Lead times for the purchase of certain materials and equipment from suppliers have increased and in some cases have limited our ability to rapidly respond to increased demand, and may continue to do so in the future. These conditions have been exacerbated by suppliers, customers and companies reducing their inventory levels in response to the recent macroeconomic downturn. We are currently evaluating the capabilities of additional potential contract manufacturing partners to ensure we have a scalable and cost effective manufacturing strategy appropriate for executing our business objectives over a long-term horizon. To the extent we introduce additional contract manufacturing partners, introduce new products with new partners and/or move existing internal or external production lines to new partners, we could experience supply disruptions during the transition process. In addition, due to our customers' requirements relating to the qualification of our suppliers and contract manufacturing facilities and operations, we cannot quickly enter into alternative supplier relationships, which prevents us from being able to respond immediately to adverse events affecting our suppliers.

### ***We may not be able to maintain or improve gross margin levels.***

We may not be able to maintain or improve our gross margins, due to the current economic uncertainty, changes in customer demand (including a change in product mix between different areas of our business) and pricing pressure from increased competition or other factors. During the nine months ended March 30, 2013, our gross margin decreased as compared to the nine month period ended March 31, 2012. Similarly, Opnext also experienced a decrease in its gross margin during the fiscal year 2012 as compared to fiscal year 2011. We are attempting to reduce our product costs and improve our product mix to offset price competition and erosion expected in most product categories, but there is no assurance that we will be successful. Our gross margins can also be adversely impacted for reasons including, but not limited to, fixed manufacturing costs that would not be expected to decrease in proportion to any decrease in revenues, as occurred due to the flooding in Thailand, unfavorable production yields or variances, increases in costs of input parts and materials, the timing of movements in our inventory balances, warranty costs and related returns, changes in foreign currency exchange rates, and possible exposure to inventory valuation reserves. Any failure to maintain, or improve, our gross margins will adversely affect our financial results, including our goal to achieve sustainable cash flow positive operations.

### ***Our results of operations have been and may be materially and adversely affected by flooding in Thailand.***

In October 2011, certain areas in Thailand suffered major flooding as a result of monsoons. This flooding had a material impact on our business and results of operations and on the business and results of operations of Opnext. The primary contract manufacturer for us and Opnext, Fabrinet, suspended operations at two factories located in Chokchai, Thailand and Pinehurst, Thailand. The Chokchai factory suffered extensive flood damage and became inaccessible due to high water levels inside and surrounding the manufacturing facility. As a result of this flooding, we and Opnext experienced a significant decline in products sales in fiscal year 2012, and are uncertain about the likelihood of recovering customer share of certain products to pre-flood levels, including certain data communications products. We also had delays in the recovery of our ramp of 40G modulators which impacted our 40G modulator and 40G transponder revenues in our first fiscal quarter of 2013. We also incurred significant damage to our inventory and property and equipment located at the Chokchai facility. During the year ended June 30, 2012, we recorded impairment charges of \$4.2 million related to the write-off of the net book value of damaged inventory and \$3.9 million related to the write-off of the net book value of property and equipment based on our preliminary estimates of the damage caused by the flooding; and we incurred \$5.3 million in personnel-related costs, professional fees and related expenses in connection with our recovery efforts. Similarly, during the quarter ended March 31, 2012, Opnext recorded charges of \$9.7 million for fixed asset impairments and \$10.9 million for damaged inventory based on its preliminary estimates of the damage caused by the flooding. Although we do not anticipate incurring additional material expenses or losses related to damaged equipment and inventory or recovery efforts in fiscal year 2013, we will continue to evaluate our estimates of flood-related losses.

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It is possible that our customers could experience supply chain disruptions as a result of other suppliers whose manufacturing operations in Thailand have been impacted by the flooding which could impact our customers' demand, or the timing of their demand, for our products. It is also possible that our customers will seek alternative suppliers of comparable products if we are unable to meet their supply needs as a result of the flooding in Thailand. While we believe our insurance coverage, both property and business interruption, will mitigate a portion of the adverse impact, there can be no assurance as to the amount or timing of insurance recoveries beyond those received through March 2013, or that the timing or amounts will be sufficient to fully compensate for negative impacts on our operating cash flow during the recovery period. If we do not efficiently and effectively mitigate the impact of the flooding on our business or if the adverse impact extends for a longer period of time than expected, our results of operations would be materially and adversely affected.

***Our business and results of operations may continue to be negatively impacted by general economic, financial market conditions and market conditions in the industries in which we operate, and such conditions may increase the other risks that affect our business.***

Over the past few years, the world's financial markets have experienced significant turmoil, resulting in reductions in available credit, increased costs of credit, extreme volatility in security prices, potential changes to existing credit terms, rating downgrades of investments and reduced valuations of securities generally. In light of these economic conditions, many of our customers reduced their spending plans, leading them to draw down their existing inventory and reduce orders for our products. It is possible that economic conditions could result in further setbacks, and that these customers, or others, could as a result significantly reduce their capital expenditures, draw down their inventories, reduce production levels of existing products, defer introduction of new products or place orders and accept delivery for products for which they do not pay us due to their economic difficulties or other reasons. These conditions have contributed materially and adversely affected the market conditions in the industries in which we operate, and have had a material adverse impact on our revenues. In addition, the financial downturn affected the financial strength of certain of our customers, including their ability to obtain credit to finance purchases of our products, and could adversely affect additional customers in the future. Our suppliers may also be adversely affected by economic conditions that may impact their ability to provide important components used in our manufacturing processes on a timely basis, or at all. To a large degree, orders from our customers are dependent on demand from telecom carrier capital expenditures around the world. The capital expenditure plans and execution by telecom carriers can also be adversely impacted, both in terms of total spend and in determination of areas of investment within network infrastructures, by global and regional macroeconomic conditions.

These conditions could also result in reduced capital resources because of the potential lack of credit availability, higher costs of credit and the stretching of payables by creditors seeking to preserve their own cash resources. We are unable to predict the likely duration, severity and potential continuation of any disruption in financial markets and adverse economic conditions in the U.S. and other countries, but the longer the duration the greater the risks we face in operating our business.

***The markets in which we operate are highly competitive, which could result in lost sales and lower revenues.***

The market for optical components and modules is highly competitive and this competition could result in our existing customers moving their orders to our competitors. We are aware of a number of companies that have developed or are developing optical component products, including tunable lasers, pluggables, wavelength selective switches and thin film filter products, among others, that compete directly with our current and proposed product offerings.

Certain of our competitors may be able to more quickly and effectively:

develop or respond to new technologies or technical standards;

react to changing customer requirements and expectations;

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devote needed resources to the development, production, promotion and sale of products; and

deliver competitive products at lower prices.

Some of our current competitors, as well as some of our potential competitors, have longer operating histories, greater name recognition, broader customer relationships and industry alliances and substantially greater financial, technical and marketing resources than we do. In addition, market leaders in industries such as semiconductor and data communications, who may also have significantly more resources than we do, may in the future enter our market with competing products. Our competitors and new Chinese companies are establishing manufacturing operations in China to take advantage of comparatively low manufacturing costs. All of these risks may be increased if the market were to further consolidate through mergers or other business combinations between competitors.

Certain of our competitors may not be impacted by the flooding in Thailand and this may place competitive pressures on our ability to recover our flood-affected revenue losses.

We may not be able to compete successfully with our competitors and aggressive competition in the market may result in lower prices for our products and/or decreased gross margins. Any such development could have a material adverse effect on our business, financial condition and results of operations.

***We have a complex multinational tax structure, and changes in effective tax rates or adverse outcomes resulting from examination of our income tax returns could adversely affect our results.***

We have a complex multinational tax structure with multiple types of intercompany transactions, and our allocation of profits and losses among us and our subsidiaries through our intercompany transfer pricing agreements is subject to review by the Internal Revenue Service and other tax authorities. Our future effective tax rates could be adversely affected by earnings being lower than anticipated in countries where we have lower statutory rates and higher than anticipated in countries where we have higher statutory rates, by changes in the valuation of our deferred tax assets and liabilities, or by changes in tax laws, regulations, accounting principles or interpretations thereof. In addition, we are also subject to the continuous examination of our income tax returns and related transfer pricing documentation by the Internal Revenue Service and other tax authorities. We regularly assess the likelihood of adverse outcomes resulting from these examinations to determine the adequacy of our provision for income taxes. There can be no assurance that the outcomes from these continuous examinations will not have an adverse effect on our operating results and financial condition.

***Our success will depend on our ability to anticipate and respond to evolving technologies and customer requirements.***

The market for telecommunications equipment is characterized by substantial capital investment, rapid and unpredictable changes in customer demand and diverse and evolving technologies. For example, the market for optical components is currently characterized by a trend toward the adoption of pluggable components and tunable transmitters that do not require the customized interconnections of traditional fixed wavelength gold box devices and the increased integration of components on subsystems. Our ability to anticipate and respond to these and other changes in technology, industry standards, customer requirements and product offerings and to develop and introduce new and enhanced products will be significant factors in our ability to succeed. We expect that new technologies will continue to emerge as competition in the telecommunications industry increases and the need for higher and more cost efficient bandwidth expands. The introduction of new products embodying new technologies or the emergence of new industry standards could render our existing products or products in development uncompetitive from a pricing standpoint, obsolete or unmarketable, which would negatively affect our financial condition and results of operations.

***We depend on a limited number of customers for a significant percentage of our revenues.***

Historically, we have generated most of our revenues from a limited number of customers. Our dependence on a limited number of customers is due to the fact that the optical telecommunications systems industry is dominated by a small number of large companies. These companies in turn depend primarily on a limited number of major telecommunications carrier customers to purchase their products that incorporate our optical components. For example, during the nine months ended March 30, 2013 and in the years ended June 30, 2012, July 2, 2011 and July 3, 2010, our three largest customers accounted for 31 percent, 29 percent, 36 percent and 29 percent of our revenues, respectively. Similarly, for Opnext, sales to its two largest customers in fiscal year 2012 accounted for 41 percent of its total revenues and sales to its three largest customers in fiscal year 2011 accounted for 45 percent of its total revenues. The combined company continues to rely on a limited number of customers for a significant portion of its revenue. Because we rely on a limited number of customers for significant percentages of our revenues, a decrease in demand for our products from any of our major customers for any reason (including due to market conditions, catastrophic events or otherwise) could have a materially adverse impact on our financial conditions and results of operations. For example, during the second half of fiscal 2012, our revenues were adversely impacted by a significant change in demand expectations from a particular major customer. Further, the industry in

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which our customers operate is subject to a trend of consolidation. To the extent this trend continues, we may become dependent on even fewer customers to maintain and grow our revenues.

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*The majority of our long-term customer contracts do not commit customers to specified buying levels, and our customers may decrease, cancel or delay their buying levels at any time with little or no advance notice to us.*

The majority of our customers typically purchase our products pursuant to individual purchase orders or contracts that do not contain purchase commitments. Some customers provide us with their expected forecasts for our products several months in advance, but many of these customers may decrease, cancel or delay purchase orders already in place, and the impact of any such actions may be intensified given our dependence on a small number of large customers. If any of our major customers decrease, stop or delay purchasing our products for any reason, our business and results of operations would be harmed. Cancellation or delays of such orders may cause us to fail to achieve our short-term and long-term financial and operating goals and result in excess and obsolete inventory. For example, in mid-September 2010, we did experience certain deferrals and cancellation of orders which adversely impacted our financial results. In addition, during the second half of fiscal 2012, our revenues were adversely impacted by a significant change in demand expectations from a particular major customer.

*We have significant manufacturing and research and development operations in China, which exposes us to risks inherent in doing business in China.*

A significant portion of our assembly and test operations, chip-on-carrier operations and manufacturing and supply chain management operations are concentrated in our facility in Shenzhen, China. In addition, we have substantial research and development related activities in Shenzhen and Shanghai, China. To be successful in China we will need to:

qualify our manufacturing lines and the products we produce in Shenzhen, as required by our customers;

attract and retain qualified personnel to operate our Shenzhen facility, even during the transition period to Venture; and

attract and retain research and development employees at our Shenzhen and Shanghai facilities.

We cannot assure you that we will be able to do any of these.

Employee turnover in China is high due to the intensely competitive and fluid market for skilled labor. To operate our Shenzhen facility under these conditions, we will need to continue to hire direct manufacturing personnel, administrative personnel and technical personnel; obtain and retain required legal authorization to hire such personnel; and incur the time and expense to hire and train such personnel. On March 28, 2012, shortly after announcing the agreement with Venture, certain of our employees in Shenzhen initiated a work stoppage. The work stoppage impacted our Shenzhen manufacturing capabilities temporarily up to and including April 4, 2012. Revenues for the quarter ended March 31, 2012 were adversely impacted by approximately \$4.0 million by the work stoppage.

Inflation rates in China are higher than in most jurisdictions in which we operate. We believe that salary inflation rates for the skilled personnel we hire and seek to retain in Shenzhen and Shanghai are likely to be higher than overall inflation rates.

Operations in China are subject to greater political, legal and economic risks than our operations in other countries. In particular, the political, legal and economic climate in China, both nationally and regionally, is fluid and unpredictable. Our ability to operate in China may be adversely affected by changes in Chinese laws and regulations such as those related to, among other things, taxation, import and export tariffs, environmental regulations, land use rights, intellectual property, currency controls, employee benefits and other matters. In addition, we may not obtain or retain the requisite legal permits to continue to operate in China, and costs or operational limitations may be imposed in connection with obtaining and complying with such permits.

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We intend to continue to export the products manufactured at our Shenzhen facility. Under current regulations, upon application and approval by the relevant governmental authorities, we will not be subject to certain Chinese taxes and will be exempt from certain duties on imported materials that are used in the manufacturing process and subsequently exported from China as finished products. However, Chinese trade regulations are in a state of flux, and we may become subject to other forms of taxation and duties in China or may be required to pay export fees in the future. In the event that we become subject to new forms of taxation or export fees in China, our business and results of operations could be materially adversely affected. We may also be required to expend greater amounts than we currently anticipate in connection with increasing production at our Shenzhen facility. Any one of the factors cited above, or a combination of them, could result in unanticipated costs or interruptions in production, which could materially and adversely affect our business.

***Our results of operations may suffer if we do not effectively manage our inventory, and we may continue to incur inventory-related charges.***

We need to manage our inventory of component parts and finished goods effectively to meet changing customer requirements. Accurately forecasting customers' product needs is difficult. Some of our products and supplies have in the past, and may in the future, become obsolete while in inventory due to rapidly changing customer specifications or a decrease in customer demand. We also have exposure to contractual liabilities to our contract manufacturers for inventories purchased by them on our behalf, based on our forecasted requirements, which may become excess or obsolete. Our inventory balances also represent an investment of cash. To the extent our inventory turns are slower than we anticipate based on historical practice, our cash conversion cycle extends and more of our cash remains invested in working capital. If we are not able to manage our inventory effectively, we may need to write down the value of some of our existing inventory or write off non-saleable or obsolete inventory. We have from time to time incurred significant inventory-related charges. Any such charges we incur in future periods could materially and adversely affect our results of operations. As part of the transition of our Shenzhen manufacturing facility to Venture, we may need to invest in additional inventories during the corresponding transition period, and in the future may be exposed to contractual liabilities to Venture for inventories purchased by them on our behalf.

***Sales of our products could decline if customer and/or supplier relationships are disrupted by our recent acquisition activities.***

The customers of acquired businesses, and/or of predecessor companies, may not continue their historical buying patterns. Customers may defer purchasing decisions as they evaluate the likelihood of successful integration of our products and our future product strategy, or consider purchasing products of our competitors.

Customers may also seek to modify or terminate existing agreements, or prospective customers may delay entering into new agreements or purchasing our products or may decide not to purchase any products from us. In addition, by increasing the breadth of our business, the transactions may make it more difficult for us to enter into relationships, including customer relationships, with strategic partners, some of whom may view us as a more direct competitor than any of the predecessor and/or acquired businesses as independent companies.

Competitive positions in the market, including relative to suppliers who are also competitors, could change as a result of an acquisition, and this could impact supplier relationships, including the terms under which we do business with such suppliers.

***As a result of our recent business combinations, we have become a larger and more geographically diverse organization, with greater available market opportunities. If our management is unable to manage the combined organization efficiently, including the challenges of managing the growth potentially available from expanded market opportunities, our operating results will suffer.***

As of March 30, 2013, we had approximately 3,000 employees in a total of 24 facilities around the world. As a result of the acquisition of Opnext, we face challenges inherent in efficiently managing an increased number of employees over large geographic distances, including the need to implement appropriate systems, policies, benefits and compliance programs. Our inability to manage successfully the geographically more diverse (including from a cultural perspective) and substantially larger combined organization, including managing and executing the planned acquisition synergies and transitions with Opnext, could have a material adverse effect on our operating results and, as a result, on the market price of our common stock. The Opnext acquisition and other recent acquisitions have increased our serviceable available markets and scaling the company to address the growth potentially available from addressing these markets, and potentially available within our previously existing markets, creates additional challenges of a similar nature. We also continue to evaluate plans and alternatives to simplify the merged company, and to reduce our profitability break-even levels, which could include additional strategic transactions, such as asset sales or intellectual property transactions and further actions to restructure the merged company. The corresponding activities could distract from normal business operations and adversely impact our ability to execute our operating results.

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***Our products are complex and may take longer to develop than anticipated and we may not recognize revenues from new products until after long field testing and customer acceptance periods.***

Many of our new products must be tailored to customer specifications. As a result, we are developing new products and using new technologies in those products. For example, while we currently manufacture and sell discrete gold box technology, we expect that many of our sales of gold box technology will soon be replaced by pluggable modules. New products or modifications to existing products often take many quarters or even years to develop because of their complexity and because customer specifications sometimes change during the development cycle. We often incur substantial costs associated with the research and development, design, sales and marketing activities in connection with products that may be purchased long after we have incurred such costs. In addition, due to the rapid technological changes in our market, a customer may cancel or modify a design project before we begin large-scale manufacture of the product and receive revenues from the customer. It is unlikely that we would be able to recover the expenses for cancelled or unutilized design projects. It is difficult to predict with any certainty, particularly in the present economic climate, the frequency with which customers will cancel or modify their projects, or the effect that any cancellation or modification would have on our results of operations. In some cases, the adoption of our new product offerings can also become a function of the pace of adoption of new technologies or new data rates at the telecom network level.

***As a result of our global operations, our business is subject to currency fluctuations that have adversely affected our results of operations in recent quarters and may continue to do so in the future.***

Our financial results have been and will continue to be materially impacted by foreign currency fluctuations. At certain times in our history, declines in the value of the U.S. dollar versus the U.K. pound sterling have had a major negative effect on our margins and our cash flow. A significant portion of our expenses are denominated in U.K. pounds sterling and substantially all of our revenues are denominated in U.S. dollars.

Fluctuations in the exchange rate between these two currencies and, to a lesser extent, other currencies in which we collect revenues and/or pay expenses could have a material effect on our future operating results. For example during fiscal year 2012, the Swiss franc depreciated approximately 13 percent relative to the U.S. dollar, and the U.K. pound sterling depreciated approximately 3 percent relative to the U.S. dollar, impacting our annual manufacturing overhead and operating expenses. If the U.S. dollar stays the same or depreciates relative to the Swiss franc and/or U.K. pound sterling in the future, our future operating results may be materially impacted. In addition, due to our acquisition of Opnext, we have significant additional exposure to fluctuations in the exchange rate between the U.S. dollar and the Japanese yen, since an increasing portion of our expenses are denominated in Japanese yen. Additional exposure could also result should the exchange rate between the U.S. dollar and the Chinese yuan, the South Korean won, the Israeli shekel, or the Euro vary more significantly than they have to date.

We engage in currency hedging transactions in an effort to cover some of our exposure to U.S. dollar to U.K. pound sterling currency fluctuations, and we may be required to convert currencies to meet our obligations. We may, in the future, enter into similar hedging transactions in an effort to cover some of our exposure to U.S. dollar to Japanese yen currency fluctuations. These transactions may not operate to fully hedge our exposure to currency fluctuations, and under certain circumstances, these transactions could have an adverse effect on our financial condition.

***We may record additional impairment charges that will adversely impact our results of operations.***

As of March 30, 2013, we had goodwill of approximately \$10.9 million and \$36.9 million in other intangible assets on our condensed consolidated balance sheet. If we make changes in our business strategy or if market or other conditions adversely affect our business operations, we may be forced to record an impairment charge related to these assets, which would adversely impact our results of operations. If impairment has occurred, we will be required to record an impairment charge for the difference between the carrying value of the goodwill and the implied fair value of the goodwill in the period in which such determination is made. The testing of goodwill for impairment requires us to make significant estimates about the future performance and cash flows of our business, as well as other assumptions. These estimates can be affected by numerous factors, including changes in economic, industry, or market conditions, changes in underlying business operations, future reporting unit operating performance, changes in competition, or changes in technologies. Any changes in key assumptions, or actual performance compared with those assumptions, about our business and its future prospects or other assumptions could affect the fair value of one or more reporting units, and result in an impairment charge. During the first quarter of fiscal year 2013, we recorded \$0.9 million in restructuring charges related to the impairment of certain technology that is now considered redundant following the acquisition of Opnext.



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During the fourth quarter of fiscal year 2012 we completed our annual first step analysis for potential impairment of our goodwill, which included examining the impact of current general economic conditions on our future prospects and the current level of our market capitalization. Based on this analysis, we concluded that our goodwill was not impaired.

During the fiscal year ended July 2, 2011, we determined that the goodwill related to our WSS reporting unit was fully impaired. Impairment of goodwill and other intangible assets for fiscal year 2011 amounted to \$20.0 million.

***We will incur significant additional restructuring charges that will adversely affect our results of operations.***

We have previously enacted a series of restructuring plans and cost reduction plans designed to reduce our manufacturing overhead and our operating expenses that have resulted in significant restructuring charges. Such charges have adversely affected, and will continue to adversely affect, our results of operations for the periods in which such charges have been, or will be, incurred. Additionally, actual costs have in the past, and may in the future, exceed the amounts estimated and provided for in our financial statements. Significant additional charges could materially and adversely affect our results of operations in the periods that they are incurred and recognized. In addition, any restructuring activities will require significant cash commitments and will adversely affect our cash balances.

For instance, we accrued \$5.4 million and \$2.2 million in restructuring charges during fiscal years 2009 and 2010, respectively, in connection with our merger with Avanex. On July 4, 2009, we completed the exchange of our New Focus business to Newport in exchange for Newport's high powered laser diode business, which resulted in us incurring \$0.5 million in restructuring charges in fiscal year 2010 in connection with the transfer of the Tucson manufacturing operations to our European facilities. During fiscal year 2011, we incurred \$0.6 million in restructuring charges related to a restructuring plan specific to our acquisition of Mintera. During fiscal year 2012 and the nine months ended March 30, 2013, we incurred \$6.0 million and \$4.0 million in restructuring charges, respectively, in connection with the transition of our Shenzhen, China assembly and test operations to Venture, and expect to incur an additional \$4.5 million to \$8.5 million in restructuring charges over the remaining transition period. During the nine months ended March 30, 2013, we incurred \$9.6 million in restructuring charges in connection with the acquisition and integration of Opnext, and expect to incur additional restructuring charges related to this plan over the next quarter.

***If our customers do not qualify our manufacturing lines or the manufacturing lines of our subcontractors for volume shipments, our operating results could suffer.***

Most of our customers do not purchase products, other than limited numbers of evaluation units, prior to qualification of the manufacturing line for volume production. Our existing manufacturing lines, as well as each new manufacturing line, must pass through varying levels of qualification with our customers. Our manufacturing lines have passed our qualification standards, as well as our technical standards. However, our customers also require that our manufacturing lines pass their specific qualification standards and that we, and any subcontractors that we may use, be registered under international quality standards. In addition, we have in the past, and may in the future, encounter quality control issues as a result of relocating our manufacturing lines or introducing new products to fill production. We may be unable to obtain customer qualification of our manufacturing lines or we may experience delays in obtaining customer qualification of our manufacturing lines. Such delays or failure to obtain qualifications would harm our operating results and customer relationships. To the extent we introduce new contract manufacturing partners and move any production lines from existing internal or external facilities the new production lines will likely need to be re-qualified with customers. Exposures to these risks could increase materially during the transition of our Shenzhen product lines to Venture Malaysia, and as a result of our acquisition and integration of Opnext, including relocating certain operations from Totsuka, Japan to a different leased facility in Sagami-hara, Japan.

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***Delays, disruptions or quality control problems in manufacturing could result in delays in product shipments to customers and could adversely affect our business.***

We may experience delays, disruptions or quality control problems in our manufacturing operations or the manufacturing operations of our subcontractors. As a result, we could incur additional costs that would adversely affect our gross margins, and our product shipments to our customers could be delayed beyond the shipment schedules requested by our customers, which would negatively affect our revenues, competitive position and reputation. Furthermore, even if we are able to deliver products to our customers on a timely basis, we may be unable to recognize revenues at the time of delivery based on our revenue recognition policies. Exposures to these risks could increase during the transition of our Shenzhen product lines to Venture Malaysia over what is anticipated to be a two to three year period, and with regards to any product line manufacturing transitions associated with our integration of Opnext.

***We may experience low manufacturing yields.***

Manufacturing yields depend on a number of factors, including the volume of production due to customer demand and the nature and extent of changes in specifications required by customers for which we perform design-in work. Higher volumes due to demand for a fixed, rather than continually changing, design generally results in higher manufacturing yields, whereas lower volume production generally results in lower yields. In addition, lower yields may result, and have in the past resulted, from commercial shipments of products prior to full manufacturing qualification to the applicable specifications. Changes in manufacturing processes required as a result of changes in product specifications, changing customer needs and the introduction of new product lines have historically caused, and may in the future cause, significantly reduced manufacturing yields, resulting in low or negative margins on those products. Moreover, an increase in the rejection rate of products during the quality control process, before, during or after manufacture, results in lower yields and margins. Finally, manufacturing yields and margins can also be lower if we receive or inadvertently use defective or contaminated materials from our suppliers. Any reduction in our manufacturing yields will adversely affect our gross margins and could have a material impact on our operating results.

***Our intellectual property rights may not be adequately protected.***

Our future success will depend, in large part, upon our intellectual property rights, including patents, copyrights, design rights, trade secrets, trademarks and know-how. We maintain an active program of identifying technology appropriate for patent protection. Our practice is to require employees and consultants to execute non-disclosure and proprietary rights agreements upon commencement of employment or consulting arrangements. These agreements acknowledge our exclusive ownership of all intellectual property developed by the individuals during their work for us and require that all proprietary information disclosed will remain confidential. Although such agreements may be binding, they may not be enforceable in full or in part in all jurisdictions and any breach of a confidentiality obligation could have a negative effect on our business and our remedy for such breach may be limited.

Our intellectual property portfolio is an important corporate asset. The steps we have taken and may take in the future to protect our intellectual property may not adequately prevent misappropriation or ensure that others will not develop competitive technologies or products. We cannot assure you that our competitors will not successfully challenge the validity of our patents or design products that avoid infringement of our proprietary rights with respect to our technology. There can be no assurance that other companies are not investigating or developing other similar technologies, that any patents will be issued from any application pending or filed by us, or that, if patents are issued, that the claims allowed will be sufficiently broad to deter or prohibit others from marketing similar products. In addition, we cannot assure you that any patents issued to us will not be challenged, invalidated or circumvented, or that the rights under those patents will provide a competitive advantage to us or that our products and technology will be adequately covered by our patents and other intellectual property. Further, the laws of certain regions in which our products are or may be developed, manufactured or sold, including Asia-Pacific, Southeast Asia and Latin America, may not be enforceable to protect our products and intellectual property rights to the same extent as the laws of the United States, the U.K. and continental European countries. This is especially relevant since we have transferred our assembly and test operations and chip-on-carrier operations, including certain engineering-related functions, to Shenzhen, China, and have recently signed an agreement to transition these assembly and test operations to Malaysia.

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Opnext has historically relied on Hitachi for assistance with the research and development efforts related to Opnext's product portfolio. Any failure of Hitachi to continue to provide these services could have a material adverse effect on our business. Opnext's product expertise is based on the research ability developed within their Hitachi heritage and through joint research and development in lasers and optical technologies. A key factor to Opnext's business success and strategy is fundamental laser research. Opnext relied on access to Hitachi's research laboratories pursuant to a research and development agreement with Hitachi, which includes access to Hitachi's research facilities and engineers, to conduct research and development activities that are important to the establishment of new technologies and products vital to their current and future business. Should access to Hitachi's research laboratories become unavailable or available at less attractive terms in the future, this may impede development of new technologies and products, and our financial condition and operating results could be materially adversely affected.

***Our products may infringe the intellectual property rights of others, which could result in expensive litigation or require us to obtain a license to use the technology from third parties, or we may be prohibited from selling certain products in the future.***

Companies in the industry in which we operate frequently are sued or receive informal claims of patent infringement or infringement of other intellectual property rights. We have, from time to time, received such claims, including from competitors and from companies that have substantially more resources than us.

Third parties may in the future assert claims against us concerning our existing products or with respect to future products under development, or with respect to products that we may acquire through acquisitions. We have entered into and may in the future enter into indemnification obligations in favor of some customers that could be triggered upon an allegation or finding that we are infringing other parties' proprietary rights. If we do infringe a third party's rights, we may need to negotiate with holders of those rights in order to obtain a license to those rights or otherwise settle any infringement claim. We have from time to time received notices from third parties alleging infringement of their intellectual property and where appropriate have entered into license agreements with those third parties with respect to that intellectual property. Any license agreements that we wish to enter into the future with respect to intellectual property rights may not be available to us on commercially reasonable terms, or at all. We may not in all cases be able to resolve allegations of infringement through licensing arrangements, settlement, alternative designs or otherwise. We may take legal action to determine the validity and scope of the third-party rights or to defend against any allegations of infringement. The recent economic downturn could result in holders of intellectual property rights becoming more aggressive in alleging infringement of their intellectual property rights and we may be the subject of such claims asserted by a third party. In the course of pursuing any of these means or defending against any lawsuits filed against us, we could incur significant costs and diversion of our resources and our management's attention. Due to the competitive nature of our industry, it is unlikely that we could increase our prices to cover such costs. In addition, such claims could result in significant penalties or injunctions that could prevent us from selling some of our products in certain markets or result in settlements or judgments that require payment of significant royalties or damages.

***If we fail to obtain the right to use the intellectual property rights of others necessary to operate our business, our business and results of operations will be materially and adversely affected.***

Certain companies in the telecommunications and optical components markets in which we sell our products have experienced frequent litigation regarding patent and other intellectual property rights. Numerous patents in these industries are held by others, including academic institutions and our competitors. Optical component suppliers may seek to gain a competitive advantage or other third parties, inside or outside our market, may seek an economic return on their intellectual property portfolios by making infringement claims against us. We currently in-license certain intellectual property of third parties, and in the future, we may need to obtain license rights to patents or other intellectual property held by others to the extent necessary for our business. Unless we are able to obtain such licenses on commercially reasonable terms, patents or other intellectual property held by others could be used to inhibit or prohibit our production and sale of existing products and our development of new products for our markets. Licenses granting us the right to use third-party technology may not be available on commercially reasonable terms, or at all. Generally, a license, if granted, would include payments of up-front fees, ongoing royalties or both. These payments or other terms could have a significant adverse impact on our operating results. In addition, in the event we are granted such a license, it is likely such license would be non-exclusive and other parties, including competitors, may be able to utilize such technology. Our larger competitors may be able to obtain licenses or cross-license their technology on better terms than we can, which could put us at a competitive disadvantage. In addition, our larger competitors may be able to buy such technology and preclude us from licensing or using such technology.

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***Prior to our acquisition of Opnext, Opnext licensed its intellectual property to Hitachi and its wholly owned subsidiaries without restriction. In addition, Hitachi is free to license certain of Hitachi's intellectual property that Opnext used in its business to any third party, including competitors, which could harm our business and operating results.***

Opnext was initially created as a stand-alone entity by acquiring certain assets of Hitachi through various transactions. In connection with these transactions, Opnext acquired a number of patents and know-how from Hitachi, but also granted Hitachi and its wholly owned subsidiaries a perpetual right to continue to use those patents and know-how, as well as other patents and know-how that Opnext developed during a period which ended in July 2011 (or October 2012 in certain cases). This license back to Hitachi is broad and permits Hitachi to use this intellectual property for any products or services anywhere in the world, including licensing this intellectual property to competitors of the combined company.

Additionally, while significant intellectual property owned by Hitachi was assigned to Opnext when Opnext was formed, Hitachi retained and only licensed to Opnext the intellectual property rights to underlying technologies used in both Opnext products and the products of Hitachi. Under the agreement, Hitachi remains free to license these intellectual property rights to the underlying technologies to any party, including competitors. The intellectual property that has been retained by Hitachi and that can be licensed in this manner does not relate solely or primarily to one or more of Opnext's products, or groups of products; rather, the intellectual property that is licensed to Opnext by Hitachi is generally used broadly across Opnext's entire product portfolio. Competition by third parties using the underlying technologies retained by Hitachi could harm the Opnext business, financial condition and results of operations.

***The inability to obtain government licenses and approvals for desired international trading activities or technology transfers may prevent the profitable operation of our business.***

Many of our present and future business activities are subject to licensing by the United States government under the Export Administration Act, the Export Administration Regulations and other laws, regulations and requirements governing international trade and technology transfer. We presently manufacture products in China and Thailand that require such licenses. The profitable operations of our business may require the continuity of these licenses and may require further licenses and approvals for future products in these and other countries. However, there is no certainty to the continuity of these licenses, nor that further desired licenses and approvals may be obtained.

***We generate a significant portion of our revenues internationally and therefore are subject to additional risks associated with the extent of our international operations.***

For fiscal years ended June 30, 2012, July 2, 2011 and July 3, 2010, 18 percent, 17 percent and 19 percent of our revenues, respectively, were derived from sales to customers located in the United States and 82 percent, 83 percent and 81 percent of our revenues, respectively, were derived from sales to customers located outside the United States. Similarly, for Opnext's fiscal years ended March 31, 2012, 2011 and 2010, 45 percent, 40 percent and 45 percent of its revenues, respectively, were derived from sales to customers located in the United States and 55 percent, 60 percent and 55 percent of its revenues, respectively, were derived from sales to customers located outside the United States. We are subject to additional risks related to operating in foreign countries, including:

currency fluctuations, which could result in increased operating expenses and reduced revenues;

greater difficulty in accounts receivable collection and longer collection periods;

difficulty in enforcing or adequately protecting our intellectual property;

ability to hire qualified candidates;

foreign taxes;

political, legal and economic instability in foreign markets;

foreign regulations;

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changes in, or impositions of, legislative or regulatory requirements;

trade restrictions, including restrictions imposed by the United States government on trading with parties in foreign countries;

transportation delays;

epidemics and illnesses;

terrorism and threats of terrorism;

work stoppages and infrastructure problems due to adverse weather conditions or natural disasters;

work stoppages related to employee dissatisfaction;

changes in import/export regulations, tariffs, and freight rates; and

the effective protections of, and the ability to enforce, contractual arrangements.

Any of these risks, or any other risks related to our foreign operations, could materially adversely affect our business, financial condition and results of operations.

***We may face product liability claims.***

Despite quality assurance measures, defects may occur in our products. The occurrence of any defects in our products could give rise to liability for damages caused by such defects, including consequential damages. Such defects could, moreover, impair market acceptance of our products. Both could have a material adverse effect on our business and financial condition. In addition, we may assume product warranty liabilities related to companies we acquire, which could have a material adverse effect on our business and financial condition. In order to mitigate the risk of liability for damages, we carry product liability insurance with a \$25.0 million aggregate annual limit and errors and omissions insurance with a \$5.0 million annual limit. We cannot assure you that this insurance would adequately cover our costs arising from any defects in our products or otherwise.

***If we fail to attract and retain key personnel, our business could suffer.***

Our future success depends, in part, on our ability to attract and retain key personnel. Competition for highly skilled technical personnel is extremely intense and we continue to face difficulty identifying and hiring qualified engineers in many areas of our business. We may not be able to hire and retain such personnel at compensation levels consistent with our existing compensation and salary structure. Our future success also depends on the continued contributions of our executive management team and other key management and technical personnel, each of whom would be difficult to replace. The loss of services of these or other executive officers or key personnel or the inability to continue to attract qualified personnel could have a material adverse effect on our business. Following the closing of our acquisition of Opnext, we and our Chairman and Chief Executive Officer, Alain Couder, agreed upon a plan by which Mr. Couder will continue as our Chairman and Chief Executive Officer until June 30, 2014, when he will retire from the position of Chief Executive Officer. We will need to identify and recruit Mr. Couder's successor as Chief Executive Officer over the next year and a half. If we fail to identify or recruit the right person to be his successor in a timely manner, such a failure could have a material adverse effect on our business. It is also possible that as we approach Mr. Couder's expected retirement date, we could find it more difficult to retain key employees as they contemplate a change in our Chief Executive Officer position.

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In addition, certain employees of companies we have acquired, including Opnext, that are now employed by us may decide to no longer work for us with little or no notice for a number of reasons, including dissatisfaction with our corporate culture, compensation, and new roles or responsibilities, among others.

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***Our business and operating results may be adversely affected by natural disasters or other catastrophic events beyond our control.***

Our business and operating results are vulnerable to natural disasters, such as earthquakes, fires, tsunami, volcanic activity and floods, as well as other events beyond our control such as power loss, telecommunications failures and uncertainties arising out of terrorist attacks in the United States and armed conflicts overseas. For example, in the latter three quarters of fiscal year 2012, our results of operations were materially and adversely impacted by the flooding in Thailand. Additionally, our corporate headquarters and a portion of our research and development and manufacturing operations are located in Silicon Valley, California, and select manufacturing facilities which were acquired through our acquisition of Opnext are located in Japan. These regions in particular have been vulnerable to natural disasters, such as earthquakes and tsunamis. The occurrence of any of these events could pose physical risks to our property and personnel, which may adversely affect our ability to produce and deliver products to our customers. Although we presently maintain insurance against certain of these events, we cannot be certain that our insurance will be adequate to cover any damage sustained by us or by our customers.

### **Risks Related to Regulatory Compliance and Litigation**

***We are subject to anti-corruption laws in the jurisdictions in which we operate, including the U.S. Foreign Corrupt Practices Act, or the FCPA. Our failure to comply with these laws could result in penalties which could harm our reputation and have a material adverse effect on our business, results of operations and financial condition.***

We are subject to the FCPA, which generally prohibits companies and their intermediaries from making improper payments to foreign officials for the purpose of obtaining or keeping business and/or other benefits, along with various other anticorruption laws. Although we have implemented policies and procedures designed to ensure that we, our employees and other intermediaries comply with the FCPA and other anticorruption laws to which we are subject, there is no assurance that such policies or procedures will work effectively all of the time or protect us against liability under the FCPA or other laws for actions taken by our employees and other intermediaries with respect to our business or any businesses that we may acquire. We have manufacturing operations in China and other jurisdictions, many of which pose elevated risks of anti-corruption violations, and we export our products for sale internationally. This puts us in frequent contact with persons who may be considered foreign officials under the FCPA, resulting in an elevated risk of potential FCPA violations. If we are not in compliance with the FCPA and other laws governing the conduct of business with government entities (including local laws), we may be subject to criminal and civil penalties and other remedial measures, which could have an adverse impact on our business, financial condition, results of operations and liquidity. Any investigation of any potential violations of the FCPA or other anticorruption laws by U.S. or foreign authorities could harm our reputation and have an adverse impact on our business, financial condition and results of operations.

***A lack of effective internal control over our financial reporting could result in an inability to report our financial results accurately, which could lead to a loss of investor confidence in our financial reports and have an adverse effect on our stock price.***

In April 2012, in connection with the restatement of our previously issued consolidated financial statements as of and for the quarters ended March 31, 2012 and October 1, 2011, our management re-evaluated the effectiveness of our disclosure controls and procedures. As a result of that re-evaluation, our management determined that a material weakness existed in our internal controls over financial reporting such that our disclosure controls and procedures related to accounting for income taxes were not effective as of March 31, 2012 and October 1, 2011. Additional information regarding the prior period restatements are contained in Note 1 to the condensed consolidated financial statements included as part of Amendment No. 1 to Quarterly Report on Form 10-Q for each of the respective quarters. During the quarter ended March 31, 2012, we implemented enhancements to our internal controls over financial reporting, including adding additional monitoring controls over the preparation and filing of foreign income tax returns. Our remediation efforts, including the testing of these controls continued throughout our fiscal year 2012. The material weakness was considered remediated in the fourth quarter of fiscal year 2012, once these controls were shown to be operational for a sufficient period of time to allow management to conclude that these controls were operating effectively. However, we cannot assure you that similar material weaknesses will not recur. If additional material weaknesses or significant deficiencies in our internal control are discovered or occur in the future, our consolidated financial statements may contain material misstatements and we could be required to restate our financial results.



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Effective internal controls over financial reporting are necessary for us to provide reliable financial reports. If we cannot provide reliable financial reports or prevent fraud, our business and operating results could be harmed. Our failure to implement and maintain effective internal control over financial reporting could result in a material misstatement of our financial statements or otherwise cause us to fail to meet our financial reporting obligations. This, in turn, could result in a loss of investor confidence in the accuracy and completeness of our financial reports, which could have an adverse effect on our business, financial condition, operating results and our stock price, and we could be subject to stockholder litigation as a result. Even if we are able to implement and maintain effective internal control over financial reporting, the costs of doing business may increase and our management may be required to dedicate greater time and resources to that effort. In addition, we have in the past, and may in the future, acquire companies that have either experienced material weaknesses in their internal controls over financial reporting or have had no previous reporting obligations under Sarbanes-Oxley. Failure to integrate acquired businesses into our internal controls over financial reporting could cause those controls to fail.

### ***Litigation may substantially increase our costs and harm our business.***

We are a party to numerous lawsuits and will continue to incur legal fees and other costs related thereto, including potentially expenses for the reimbursement of legal fees of officers and directors under indemnification obligations. The expense of continuing to defend such litigation may be significant. In addition, there can be no assurance that we will be successful in any defense. Further, the amount of time that will be required to resolve these lawsuits is unpredictable and these actions may divert management's attention from the day-to-day operations of our business, which could adversely affect our business, results of operations and cash flows. Litigation is subject to inherent uncertainties, and an adverse result in these or other matters that may arise from time to time could have a material adverse effect on our business, results of operations and financial condition.

For a description of our current material litigation, see Part II, Item 1 *Legal Proceedings* of this Quarterly Report on Form 10-Q.

In addition, from time to time, we have been a party to certain intellectual property infringement litigation as more fully described above under *Risks Related to Our Business* *Our products may infringe the intellectual property rights of others, which could result in expensive litigation or require us to obtain a license to use the technology from third parties, or we may be prohibited from selling certain products in the future.*

### ***Our business involves the use of hazardous materials, and we are subject to environmental and import/export laws and regulations that may expose us to liability and increase our costs.***

We handle hazardous materials as part of our manufacturing activities. Consequently, our operations are subject to environmental laws and regulations governing, among other things, the use and handling of hazardous substances and waste disposal. We may incur costs to comply with current or future environmental laws. As with other companies engaged in manufacturing activities that involve hazardous materials, a risk of environmental liability is inherent in our manufacturing activities, as is the risk that our facilities will be shut down in the event of a release of hazardous waste, or that we would be subject to extensive monetary liabilities. The costs associated with environmental compliance or remediation efforts or other environmental liabilities could adversely affect our business. Under applicable European Union regulations, we, along with other electronics component manufacturers, are prohibited from using lead and certain other hazardous materials in our products. We could lose business or face product returns if we fail to maintain these requirements properly.

In addition, the sale and manufacture of certain of our products require on-going compliance with governmental security and import/export regulations. We may, in the future, be subject to investigation which may result in fines for violations of security and import/export regulations. Furthermore, any disruptions of our product shipments in the future, including disruptions as a result of efforts to comply with governmental regulations, could adversely affect our revenues, gross margins and results of operations.

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

*We have a substantial amount of debt and may be unable to service or refinance this debt, which could have a material adverse effect on our business in the future, and may place us at a competitive disadvantage in our industry.*

As of March 30, 2013, we had consolidated debt of \$101.5 million outstanding, net, all of which was secured, including \$40.0 million outstanding under our senior secured revolving credit facility and \$25.0 million outstanding pursuant to the issuance by our wholly-owned subsidiary of 7.50% exchangeable senior secured second lien notes due 2018.

This high level of debt could have negative consequences. For example, it could:

result in our inability to comply with the financial and other restrictive covenants in our current and future credit facilities;

increase our vulnerability to adverse industry and general economic conditions;

require us to dedicate a substantial portion of our cash flow from operations to make scheduled principal payments on our debt, thereby reducing the availability of our cash flow for working capital, capital investments and other business activities;

limit our ability to obtain additional financing to fund future working capital, capital investments and other business activities;

limit our ability to refinance our indebtedness on terms that are commercially reasonable, or at all;

expose us to the risk of interest rate fluctuations to the extent we pay interest at variable rates on the debt;

limit our flexibility to plan for, and react to, changes in our business and industry; or

place us at a competitive disadvantage relative to our less leveraged competitors.

*Despite existing debt levels, we may still be able to incur substantially more debt, which would increase the risks associated with our leverage.*

Even with our existing debt levels, we may be able to incur substantial amounts of additional debt in the future, including debt under the senior secured revolving credit facility and any future credit facilities, some or all of which may be secured. Although the terms of the senior secured revolving credit facility and any future credit facilities will limit our ability to incur additional debt, these terms do not and will not prohibit us from incurring substantial amounts of additional debt. If new debt is added to our current debt levels, the related risks that we and they now face could intensify and could further exacerbate the risks associated with our leverage.

*Servicing our debt will require a significant amount of cash and our ability to generate cash may be affected by factors beyond our control.*

Our business may not generate cash flow in an amount sufficient to enable us to pay the principal of, or interest on, our indebtedness or to fund our other liquidity needs, including working capital, capital expenditures, product development efforts, strategic acquisitions, investments and alliances and other general corporate requirements.

If we cannot fund our liquidity needs, we will have to take actions such as: reducing or delaying capital expenditures, product development efforts, strategic acquisitions, investments and alliances; selling assets; restructuring or refinancing our debt; or seeking additional equity capital.

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We cannot assure you that any of these remedies could, if necessary, be affected on commercially reasonable terms, or at all, or that they would permit us to meet our scheduled debt service obligations. Our Credit Agreement limits the use of the proceeds from any disposition of assets disposition. As a result, we may not be allowed to use the proceeds from such dispositions to satisfy all current debt service obligations. In addition, if we incur additional debt, the risks associated with our substantial leverage, including the risk that we would be unable to service our debt or generate enough cash flow to fund our liquidity needs, could intensify.

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***Restrictive covenants in our Credit Agreement, the indenture governing our outstanding notes and the agreements governing our other indebtedness restrict our ability to operate our business.***

Our Credit Agreement and the indenture governing our outstanding senior secured second lien notes contain, and agreements governing indebtedness we may incur in the future may contain, covenants that restrict our ability to, among other things, incur additional debt, pay dividends, make investments, enter into transactions with affiliates, merge or consolidate with other entities or sell all or substantially all of our assets.

Significantly, On May 6, 2013, we entered into Amendment Number Two to the Second Amended and Restated Credit Agreement and the associated guaranties and security agreements, which amended the Credit Agreement in pertinent part by adding an affirmative covenant that Borrower shall have consummated one or more asset sales in the very near term and with a minimum threshold of net proceeds as set forth in the Amendment. If any event of default were to occur, including a failure to comply with the covenant regarding asset sales, such an event of default would (unless waived by the Lenders) entitle the Lenders, upon notice to the Borrower and the Parent, to declare the Term Loan and all other amounts owing under the Credit Agreement, immediately due and payable.

Additionally, the Credit Agreement requires us to comply with certain financial covenants. A breach of any of these covenants could result in a default under these agreements, which could allow the lenders or holders to declare all amounts outstanding thereunder immediately due and payable. If we are unable to repay outstanding borrowings when due, the lenders under the Credit Agreement, the second lien collateral agent under the indenture governing these notes and similar agents under other agreements would have the right to proceed against the collateral granted to them. We may also be prevented from taking advantage of business opportunities that arise because of the limitations imposed on us by the restrictive covenants under our indebtedness.

***At times, the market price of our common stock has fluctuated significantly.***

The market price of our common stock has been, and is likely to continue to be, highly volatile. For example, between December 29, 2012 and March 30, 2013, the market price of our common stock ranged from a low of \$1.16 per share to a high of \$1.95 per share. Many factors could cause the market price of our common stock to rise and fall. In addition to the matters discussed in other risk factors included in our public filings, some of the reasons for the fluctuations in our stock price are:

fluctuations in our results of operations, including our gross margins;

changes in our business, operations or prospects;

hiring or departure of key personnel;

new contractual relationships with key suppliers or customers by us or our competitors;

proposed acquisitions by us or our competitors;

financial results or projections that fail to meet public market analysts' expectations and changes in stock market analysts' recommendations regarding us, other optical technology companies or the telecommunication industry in general;

future sales of common stock, or securities convertible into, exchangeable or exercisable for common stock;

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adverse judgments or settlements obligating us to pay damages;

future issuances of common stock in connection with acquisitions or other transactions;

acts of war, terrorism, or natural disasters;

industry, domestic and international market and economic conditions, including the global macroeconomic downturn over the last three years and related sovereign debt issues in certain parts of the world;

low trading volume in our stock;

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developments relating to patents or property rights; and

government regulatory changes.

In connection with our acquisition of Xtellus, during the first quarter of fiscal year 2012 we issued 0.9 million shares of our common stock to settle our escrow liability. In connection with our acquisition of Mintera, during the second quarter of fiscal year 2012, we issued 0.8 million shares of our common stock to pay portions of the 12 month earnout obligations. In connection with our acquisition of Opnext, during the first quarter of fiscal year 2013, we issued 38.4 million shares of our common stock. These issuances and the subsequent sale of these shares will dilute our existing stockholders and could potentially have a negative impact on our stock price.

Our shares of common stock have experienced substantial price and volume fluctuations, in many cases without any direct relationship to our operating performance. An outgrowth of this market volatility is the significant vulnerability of our stock price to any actual or perceived fluctuation in the strength of the markets we serve, regardless of the actual consequence of such fluctuations. As a result, the market price for our stock is highly volatile. These broad market and industry factors have caused the market price of our common stock to fluctuate, and may in the future cause the market price of our common stock to fluctuate, regardless of our actual operating performance.

We are not restricted from issuing additional shares of our common stock, including securities that are convertible into or exchangeable for, or that represent the right to receive, shares of our common stock. Issuances of shares of our common stock or convertible securities, including outstanding options and warrants, will dilute the ownership interest of our stockholders.

### ***We are subject to pending securities class action and shareholder derivative legal proceedings.***

When the market price of a stock experiences a sharp decline, as our stock price recently has, holders of that stock have often brought securities class action litigation against the company that issued the stock. Several securities class action lawsuits have been filed against us and certain of our current and former officers and directors. Other class action lawsuits have been initiated against Opnext, us and certain of our respective current and former officers and directors as purported derivative actions. The securities class action complaints allege violations of section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated by the Securities and Exchange Commission. Each purported derivative complaint alleges, among other things, counts for breaches of fiduciary duty, waste, and unjust enrichment. For a description of these lawsuits, see Part II, Item 1 *Legal Proceedings* of this Quarterly Report on Form 10-Q. These lawsuits will likely divert the time and attention of our management. In addition, if these suits are resolved in a manner adverse to us, the damages we could be required to pay may be substantial and could have an adverse impact on our results of operations and our ability to operate our business.

### ***Fluctuations in our operating results could adversely affect the market price of our common stock.***

Our revenues and other operating results are likely to fluctuate significantly in the future. The timing of order placement, size of orders and satisfaction of contractual customer acceptance criteria, changes in the pricing of our products due to competitive pressures as well as order or shipment delays or deferrals, with respect to our products, may cause material fluctuations in revenues. Our lengthy sales cycle, which may extend to more than one year, may cause our revenues and operating results to vary from period to period and it may be difficult to predict the timing and amount of any variation. Delays or deferrals in purchasing decisions by our customers may increase as we develop new or enhanced products for new markets, including data communications, industrial, research, consumer and biotechnology markets. Purchase decisions by our customers are also impacted by the capital expenditure plans of the global telecom carriers, which tend to be the primary customers of our customers. Our current and anticipated future dependence on a small number of customers increases the revenue impact of each such customer's decision to delay or defer purchases from us, or decision not to purchase products from us. Our expense levels in the future will be based, in large part, on our expectations regarding future revenue sources and, as a result, operating results for any quarterly period in which material orders fail to occur, or are delayed or deferred, could vary significantly.

Because of these and other factors, quarter-to-quarter comparisons of our results of operations may not be indicative of our future performance. In future periods, our results of operations may differ, in some cases materially, from the estimates of public market analysts and investors. Such a discrepancy, or our failure to meet published financial projections, could cause the market price of our common stock to decline.

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***Because we do not intend to pay dividends, stockholders will benefit from an investment in our common stock only if it appreciates in value.***

We have never declared or paid any dividends on our common stock. We anticipate that we will retain any future earnings to support operations and to finance the development of our business and do not expect to pay cash dividends in the foreseeable future. As a result, the success of an investment in our common stock will depend entirely upon any future appreciation in its value. There is no guarantee that our common stock will appreciate in value or even maintain the price at which stockholders have purchased their shares.

***We can issue shares of preferred stock that may adversely affect your rights as a stockholder of our common stock.***

Our certificate of incorporation authorizes us to issue up to 1,000,000 shares of preferred stock with designations, rights and preferences determined from time-to-time by our board of directors. Accordingly, our board of directors is empowered, without stockholder approval, to issue preferred stock with dividend, liquidation, conversion, voting or other rights superior to those of holders of our common stock. For example, an issuance of shares of preferred stock could:

adversely affect the voting power of the holders of our common stock;

make it more difficult for a third-party to gain control of us;

discourage bids for our common stock at a premium;

limit or eliminate any payments that the holders of our common stock could expect to receive upon our liquidation; or

otherwise adversely affect the market price of our common stock.

We may in the future issue shares of authorized preferred stock at any time.

***Delaware law and our charter documents contain provisions that could discourage or prevent a potential takeover, even if such a transaction would be beneficial to our stockholders.***

Some provisions of our certificate of incorporation and bylaws, as well as provisions of Delaware law, may discourage, delay or prevent a merger or acquisition that a stockholder may consider favorable. These include provisions:

authorizing the board of directors to issue preferred stock;

prohibiting cumulative voting in the election of directors;

limiting the persons who may call special meetings of stockholders;

prohibiting stockholder actions by written consent;

creating a classified board of directors pursuant to which our directors are elected for staggered three-year terms;

permitting the board of directors to increase the size of the board and to fill vacancies;

requiring a super-majority vote of our stockholders to amend our bylaws and certain provisions of our certificate of incorporation;  
and

establishing advance notice requirements for nominations for election to the board of directors or for proposing matters that can be acted on by stockholders at stockholder meetings.

We are subject to the provisions of Section 203 of the Delaware General Corporation Law which limit the right of a corporation to engage in a business combination with a holder of 15 percent or more of the corporation's outstanding voting securities, or certain affiliated persons. We do not currently have a stockholder rights plan in place.



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Although we believe that these charter and bylaw provisions, and provisions of Delaware law, provide an opportunity for the board to assure that our stockholders realize full value for their investment, they could have the effect of delaying or preventing a change of control, even under circumstances that some stockholders may consider beneficial.

## **ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS**

### ***Issuance of Warrants***

On May 6, 2013, the Company entered into Amendment Number Two to its Second Amended and Restated Credit Agreement and the associated guaranties and security agreements (the "Amendment"), pursuant to which it issued warrants to purchase, in the aggregate, 1,836,000 shares of the Company's common stock at an exercise price of \$1.50 per share (subject to adjustment from time to time, as provided in the Warrants). The Warrants are being issued by the Company in consideration of the Term Lenders entering into the Amendment and providing the Term Loan. The offer and sale of the Warrants was not registered under the Securities Act of 1933 in reliance upon the exemption from registration under Section 4(2) of the Securities Act as such transaction did not involve a public offering of securities.

The Warrants expire on May 6, 2014, and they may be exercised prior to maturity at the option of the holders.

## **ITEM 3. DEFAULTS UPON SENIOR SECURITIES**

None.

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

Not applicable.

## **ITEM 5. OTHER INFORMATION**

The disclosure below is included in this report in lieu of filing a Current Report on Form 8-K.

### **Entry into a Material Definitive Agreement**

#### ***Amendment Number Two to Amended and Restated Credit Agreement***

Oclaro, Inc., a Delaware corporation (the "Parent"), is a party to the Second Amended and Restated Credit Agreement, dated as of November 2, 2012 (as amended, the "Credit Agreement"), among the Parent, Oclaro Technology Limited, a company incorporated under the laws of England and Wales (the "Borrower"), each lender party thereto (the "Lenders") and Wells Fargo Capital Finance, Inc., a California corporation (the "Agent"), as administrative agent for the Lenders.

On May 6, 2013, Parent, Borrower, the Lenders, the Agent and PECM Strategic Funding LP and Providence TMT Debt Opportunity Fund II LP (the "Term Lenders") entered into Amendment Number Two to the Credit Agreement and the associated guaranties and security agreements (the "Amendment"), which amended the Credit Agreement in pertinent part by: (i) adding a \$25 million term loan (the "Term Loan") to be provided by the Term Lenders; (ii) reducing the revolving credit facility from \$80 million to \$50 million (to be further reduced on a dollar-for-dollar basis by an amount equal to the net proceeds of certain asset sale transactions that the Parent may undertake in the future), eliminating the Borrower's option to increase the revolving credit facility to \$100 million and implementing an availability block under the revolving credit facility of at least \$10 million; (iii) removing the financial covenants so that Borrower is not required to maintain a minimum of \$15 million of availability under the revolving credit facility or \$15 million in qualified cash balances; (iv) adding an affirmative covenant that Borrower shall have consummated one or more asset sales in the very near term and with a minimum threshold of net proceeds as set forth in the Amendment, and (v) providing for payments and proceeds of asset sales to be applied to repay the credit facility and the Term Loan (with the first \$20.0 million of such proceeds being applied to repay Wells Fargo Capital Finance, Inc. and Silicon Valley Bank and the next \$25.0 being applied to repay Providence and the remaining proceeds being used to repay Wells Fargo Capital Finance, Inc. and Silicon Valley Bank all amounts outstanding under the credit facility), and events of default relating thereto. If any event of default were to occur, including a failure to comply with the covenant regarding asset sales described above, such an event of default would (unless waived by the Lenders) entitle the Lenders, upon notice to the Borrower and the Parent, to declare the Term Loan and all other amounts owing under the Credit Agreement, immediately due and payable.



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The Term Loan is payable in full on May 5, 2014. There are no amortization payments, but the Term Loan must be repaid with the proceeds of certain asset sale transactions as described above.

The Borrower paid the revolving lenders an amendment fee of \$500,000 and the Term Lenders a closing fee of \$2,125,000. Borrower may only prepay the principal amount of the Term Loan, in whole or in part, with the prior written consent of the Required Lenders (as defined in the Amendment). Any prepayments made on the Term Loan obligations after six months following the effective date of the term loan will be at 105% of the related obligations.

Interest on the Term Loan obligations accrues at a per annum rate equal to the sum of: (A) the PIK Term Loan Interest Rate, with such accrued interest to be capitalized quarterly and added to the outstanding principal balance of the Term Loan, and (B) the Cash Term Loan Interest Rate. The PIK Term Loan Interest Rate is 2.0% beginning on the effective date of the Term Loan (the Effective Date) up to but excluding the date six months thereafter, then it is 4.0% until the date twelve months after the Effective Date and then it is 5.0%. The Cash Term Loan Interest Rate is 7.0% beginning on the Effective Date up to but excluding the date six months thereafter, then it is 8.5% until the date twelve months after the Effective Date and then it is 10.0%.

No changes were made to the interest rates or commitment fees payable under the revolving credit facility.

The obligations of the Borrower under the Credit Agreement are guaranteed by the Parent and all significant subsidiaries of the Parent and the Borrower (collectively, the Guarantors), and are secured, pursuant to two security agreements by substantially all of the assets of the Borrower and the Guarantors, including a pledge of the capital stock holdings of the Borrower and certain Guarantors in their direct subsidiaries.

Borrowings made under the Credit Agreement are subject to the terms and conditions of the Credit Agreement, as described in the Current Reports on Form 8-K filed by Parent with the Securities and Exchange Commission on November 5, 2012 and January 29, 2013, as such terms and conditions have been amended by the Amendment.

## **Unregistered Sales of Equity Securities**

### ***Issuance of Warrants***

On May 6, 2013, the Company entered into the Amendment described above, pursuant to which it issued warrants to purchase, in the aggregate, 1,836,000 shares of the Company's common stock at an exercise price of \$1.50 per share (subject to adjustment from time to time, as provided in the Warrants). The Warrants are being issued by the Company in consideration of the Term Lenders entering into the Amendment and providing the Term Loan. The offer and sale of the Warrants was not registered under the Securities Act of 1933 in reliance upon the exemption from registration under Section 4(2) of the Securities Act as such transaction did not involve a public offering of securities. The Company also granted to the Term Lenders certain registration rights with respect to the Warrants.

The Warrants expire on May 6, 2014, and they may be exercised prior to maturity at the option of the holders.

## **ITEM 6. EXHIBITS**

The exhibits filed as part of this Quarterly Report on Form 10-Q, or incorporated by reference, are listed on the Exhibit Index immediately preceding such exhibits, which Exhibit Index is incorporated herein by reference.

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**SIGNATURE**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Date: May 9, 2013

OCLARO, INC.  
(Registrant)

By:

**/s/ JERRY TURIN**  
Jerry Turin  
Chief Financial Officer  
(Principal Financial and Accounting Officer)

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**EXHIBIT INDEX**

**Exhibit**

**Number**

**Description of Exhibit**

2.1	Agreement and Plan of Merger dated March 26, 2012, among Oclaro, Inc., Tahoe Acquisition Sub, Inc. and Opnext, Inc. (previously filed as Exhibit 2.1 to Registrant's Current Report on Form 8-K filed on March 26, 2012 and incorporated herein by reference)
3.1	Amended and Restated Bylaws of Oclaro, Inc., including Amendments No. 1 and No. 2 thereto (formerly Bookham, Inc.) (previously filed as Exhibit 3.1 to Registrant's Registration Statement on Form S-8 dated May 5, 2009 and incorporated herein by reference)
3.2	Amendment No. 3 to Amended and Restated By-Laws of Oclaro, Inc. (previously filed as Exhibit 3.1 to Registrant's Current Report on Form 8-K filed on July 28, 2011 and incorporated herein by reference).
3.3	Restated Certificate of Incorporation of Oclaro, Inc. (previously filed as Exhibit 3.2 to Registrant's Annual Report on Form 10-K filed on September 1, 2010 and incorporated herein by reference)
3.4	Certificate of Amendment to Restated Certificate of Incorporation of Oclaro, Inc. (previously filed as Exhibit 3.1 to Registrant's Current Report on Form 8-K filed on July 27, 2012 and incorporated herein by reference.)
4.1	Indenture, dated December 14, 2012, entered into by Oclaro, Inc., Oclaro Luxembourg S.A., certain of Oclaro, Inc.'s domestic and foreign subsidiaries and Wells Fargo Bank, National Association (previously filed as Exhibit 4.1 to Registrant's Current Report on Form 10-Q/A filed on February 15, 2013 and incorporated herein by reference.)
10.1	Registration Rights Agreement between Oclaro, Inc. and Hitachi, Ltd. (previously filed as Exhibit 10.1 to Registrant's Current Report on Form 8-K filed on August 24, 2012 and incorporated herein by reference.)
10.2 (4)	Purchase Agreement, dated December 14, 2012, entered into by Oclaro, Inc., Oclaro Luxembourg S.A., certain of Oclaro, Inc.'s domestic and foreign subsidiaries and Morgan Stanley & Co. LLC.
10.3 (2)(4)	Second Amended and Restated Credit Agreement, dated as of November 2, 2012, by and among Oclaro, Inc., Oclaro Technology Ltd, Wells Fargo Capital Finance, Inc. and other lenders party thereto.
10.4 (4)	Joinder Agreement to Second Amended and Restated Credit Agreement, dated as of January 23, 2013, by and between Silicon Valley Bank and Wells Fargo Capital Finance, Inc..
10.5 (2)(4)	Amendment Number One to Second Amended and Restated Credit Agreement and Amended and Restated Security Agreements, dated as of January 23, 2013, by and among Oclaro, Inc., Oclaro Technology Ltd, Wells Fargo Capital Finance, Inc., Silicon Valley Bank and other lenders party thereto.
10.6 (2)(4)	Security Agreement (Domestic), dated as of as of November 2, 2012, among Oclaro, Inc., Oclaro Photonics, Inc., Oclaro Technology, Inc., Oclaro (New Jersey), Inc., Oclaro (North America), Inc., Mintera Corporation, Opnext, Inc., Pine Photonics Communications, Inc., Opnext Subsystems, Inc., Wells Fargo Capital Finance, Inc., Silicon Valley Bank and other lenders party thereto.
10.7 (2)(4)	Security Agreement (Foreign), dated as of as of November 2, 2012, among Oclaro, Inc., Oclaro Technology Ltd., Bookham International, Ltd., Bookham Nominees Ltd., Oclaro (Canada), Inc., Oclaro Innovations LLP, Wells Fargo Capital Finance, Inc. and other lenders party thereto.
10.8 (4)	Asset Purchase Agreement between Oclaro, Inc. and II-VI Incorporated, Photop Technologies, Inc. (California) and Photop Koncent, Inc. (Fuzhou) (China) dated as of November 19, 2012.
31.1 (1)	Certification of Chief Executive Officer Pursuant to Section 302(a) of the Sarbanes-Oxley Act of 2002

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31.2 (1)	Certification of Chief Financial Officer Pursuant to Section 302(a) of the Sarbanes-Oxley Act of 2002
32.1 (1)	Certification of Chief Executive Officer Pursuant to 18 U.S.C. Section 1350
32.2 (1)	Certification of Chief Financial Officer Pursuant to 18 U.S.C. Section 1350
101.INS (3)	XBRL Instance Document
101.SCH (3)	XBRL Taxonomy Extension Schema Document
101.CAL (3)	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF (3)	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB (3)	XBRL Taxonomy Extension Label Linkbase Document
101.PRE (3)	XBRL Taxonomy Extension Presentation Linkbase Document

- (1) Filed herewith.
- (2) Portions of this exhibit have been omitted pursuant to a request for confidential treatment submitted to the Securities and Exchange Commission.
- (3) Pursuant to Rule 406T of Regulation S-T, XBRL (Extensible Business Reporting Language) information is furnished and not filed herewith, is not a part of a registration statement or prospectus for purposes of sections 11 or 12 of the Securities Act of 1933, is deemed not filed for purposes of section 18 of the Securities Exchange Act of 1934, and otherwise is not subject to liability under these sections.
- (4) Previously filed as an exhibit to Registrants Quarterly Report on Form 10-Q on February 7, 2013 and incorporated herein by reference.