

SECURITIES & EXCHANGE COMMISSION EDGAR FILING

ACACIA RESEARCH CORP

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

FORM 10-Q

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

FOR THE QUARTERLY PERIOD ENDED **SEPTEMBER 30, 2020**

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: 1-37721

Acacia Research Corporation
(Exact name of registrant as specified in its charter)

DELAWARE
(State or other jurisdiction of
incorporation or organization)

95-4405754
(I.R.S. Employer
Identification No.)

4 Park Plaza , Suite 550, Irvine, California 92614
(Address of principal executive offices, Zip Code)

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock	ACTG	The Nasdaq Stock Market, LLC

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 every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

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

Large accelerated filer <input type="checkbox"/>	Accelerated Filer <input checked="" type="checkbox"/>
Non-accelerated filer <input type="checkbox"/>	Smaller reporting company <input checked="" type="checkbox"/>
	Emerging growth company <input type="checkbox"/>

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

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

As of November 2, 2020, 49,279,453 shares of the registrant's common stock, \$0.001 par value, were issued and outstanding.

ACACIA RESEARCH CORPORATION
FORM 10-Q
FOR THE QUARTERLY PERIOD ENDED

September 30, 2020

INDEX

	<u>Page</u>
<u>CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS</u>	3
PART I. <u>FINANCIAL INFORMATION</u>	4
Item 1. <u>Financial Statements</u>	4
<u>Unaudited Condensed Consolidated Balance Sheets as of September 30, 2020 and December 31, 2019</u>	4
<u>Unaudited Condensed Consolidated Statements of Operations for the Three and Nine months Ended September 30, 2020 and 2019</u>	5
<u>Unaudited Condensed Consolidated Statements of Series A Redeemable Convertible Preferred Stock and Stockholders' Equity for the Three and Nine months Ended September 30, 2020 and 2019</u>	6
<u>Unaudited Condensed Consolidated Statements of Cash Flows for the Nine months Ended September 30, 2020 and 2019</u>	8
<u>Notes to Unaudited Condensed Consolidated Financial Statements</u>	9
Item 2. <u>Management's Discussion and Analysis of Financial Condition and Results of Operations</u>	30
Item 3. <u>Quantitative and Qualitative Disclosures about Market Risk</u>	43
Item 4. <u>Controls and Procedures</u>	44
Part II. <u>OTHER INFORMATION</u>	45
Item 1. <u>Legal Proceedings</u>	45
Item 1A. <u>Risk Factors</u>	45
Item 2. <u>Unregistered Sales of Equity Securities and Use of Proceeds</u>	45
Item 3. <u>Defaults Upon Senior Securities</u>	45
Item 4. <u>Mine Safety Disclosures</u>	46
Item 5. <u>Other Information</u>	46
Item 6. <u>Exhibits</u>	46

CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q for the three months ended September 30, 2020, or this Report, contains forward-looking statements within the meaning of the federal securities laws, which statements are subject to substantial risks and uncertainties. These forward-looking statements are intended to qualify for the safe harbor from liability established by the Private Securities Litigation Reform Act of 1995. All statements other than statements of historical fact included in this Report, or incorporated by reference into this Report, are forward-looking statements. Throughout this Report, we have attempted to identify forward-looking statements by using words such as “may,” “believe,” “will,” “could,” “project,” “anticipate,” “expect,” “estimate,” “should,” “continue,” “potential,” “plan,” “forecasts,” “goal,” “seek,” “intend,” “predict,” other forms of these words or similar words or expressions or the negative thereof, although not all forward-looking statements contain these terms. Such statements address future events and conditions concerning, among other things, intellectual property, or IP, acquisition and development, licensing and enforcement activities, other related business activities, the impact of the COVID-19 pandemic, capital expenditures, earnings, litigation, regulatory matters, markets for our services, liquidity and capital resources and accounting matters. Actual results in each case could differ materially from those anticipated in such statements by reason of factors such as our ability to invest in new technologies and patents, future global economic conditions, changes in demand for our services, legislative, regulatory and competitive developments in markets in which we and our subsidiaries operate, results of litigation and other circumstances affecting anticipated revenues and costs.

We have based our forward-looking statements on management’s current expectations and projections about trends affecting our business and industry and other future events. Although we do not make forward-looking statements unless we believe we have a reasonable basis for doing so, we cannot guarantee their accuracy. Forward-looking statements are subject to substantial risks and uncertainties that could cause our future business, financial condition, results of operations or performance to differ materially from our historical results or those expressed or implied in any forward-looking statement contained in this Report. Some of the risks and uncertainties that may cause actual results to differ from those expressed or implied in the forward-looking statements are described in “Risk Factors” included in Part II, Item 1A of this Report on Form 10-Q, and in “Risk Factors” included in Part I, Item 1A of our Annual Report on Form 10-K for the fiscal year ended December 31, 2019, filed with the Securities and Exchange Commission, or the SEC, on March 16, 2020, or our Annual Report, as well as in our other public filings with the SEC. In addition, actual results may differ as a result of additional risks and uncertainties of which we are currently unaware or which we do not currently view as material to our business.

The information contained in this Quarterly Report on Form 10-Q is not a complete description of our business or the risks associated with an investment in our common stock. We urge you to carefully review and consider the various disclosures made by us in this report and in our other reports filed with the SEC. You should read this Report in its entirety, together with the documents that we file as exhibits to this Report and the documents that we incorporate by reference into this Report, with the understanding that our future results may be materially different from what we currently expect. The forward-looking statements we make speak only as of the date on which they are made. We expressly disclaim any intent or obligation to update any forward-looking statements after the date hereof to conform such statements to actual results or to changes in our opinions or expectations, except as required by applicable law or the rules of The NASDAQ Stock Market, LLC. If we do update or correct any forward-looking statements, investors should not conclude that we will make additional updates or corrections.

We qualify all of our forward-looking statements by these cautionary statements.

PART I—FINANCIAL INFORMATION

Item 1. Financial Statements

ACACIA RESEARCH CORPORATION
 UNAUDITED CONDENSED CONSOLIDATED BALANCE SHEETS
 (In thousands, except share and per share data)

	September 30, 2020	December 31, 2019
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 162,564	\$ 57,359
Trading securities - debt	—	93,843
Trading securities - equity	24,471	17,140
Equity securities - private	116,009	—
Equity securities derivative	17,818	—
Equity securities forward contract	340	—
Prepaid investment	42,900	—
Accounts receivable	263	511
Prepaid expenses and other current assets	1,685	2,912
Total current assets	<u>366,050</u>	<u>171,765</u>
Long-term restricted cash	35,000	35,000
Investment at fair value (Note 5)	982	1,500
Patents, net of accumulated amortization	18,071	7,814
Leased right-of-use assets	1,101	1,264
Other non-current assets	5,311	818
Total assets	<u>\$ 426,515</u>	<u>\$ 218,161</u>
LIABILITIES, REDEEMABLE CONVERTIBLE PREFERRED STOCK, AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 2,707	\$ 1,765
Accrued expenses and other current liabilities	4,849	7,265
Accrued compensation	2,595	507
Royalties and contingent legal fees payable	14,230	2,178
Senior Secured Notes Payable - short-term	113,933	—
Total current liabilities	<u>138,314</u>	<u>11,715</u>
Series A warrant liabilities	5,604	3,568
Series A embedded derivative liabilities	25,682	17,974
Series B warrant liabilities	42,796	—
Long-term lease liabilities	1,101	1,264
Other long-term liabilities	593	593
Total liabilities	<u>214,090</u>	<u>35,114</u>
Commitments and contingencies (Note 6)		
Series A redeemable convertible preferred stock, par value \$ 0.001 per share; stated value \$ 100 per share; 350,000 shares authorized, issued and outstanding as of September 30, 2020 and December 31, 2019, respectively; aggregate liquidation preference of \$35,000 as of September 30, 2020 and December 31, 2019, respectively	10,134	8,089
Stockholders' equity:		
Preferred stock, par value \$ 0.001 per share; 10,000,000 shares authorized; no shares issued or outstanding	—	—
Common stock, par value \$ 0.001 per share; 300,000,000 shares authorized; 49,279,453 and 50,370,987 shares issued and outstanding as of September 30, 2020 and December 31, 2019, respectively	49	50
Treasury stock, at cost, 4,604,365 and 2,919,828 shares as of September 30, 2020 and December 31, 2019, respectively	(43,270)	(39,272)
Additional paid-in capital	650,130	652,003
Accumulated deficit	(406,451)	(439,656)
Total Acacia Research Corporation stockholders' equity	<u>200,458</u>	<u>173,125</u>
Noncontrolling interests	1,833	1,833
Total stockholders' equity	<u>202,291</u>	<u>174,958</u>
Total liabilities, redeemable convertible preferred stock, and stockholders' equity	<u>\$ 426,515</u>	<u>\$ 218,161</u>

ACACIA RESEARCH CORPORATION
UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands, except share and per share data)

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2020	2019	2020	2019
Revenues	\$ 19,466	\$ 1,711	\$ 25,399	\$ 10,558
Portfolio operations:				
Inventor royalties	5,772	776	6,843	4,752
Contingent legal fees	6,609	35	6,855	587
Litigation and licensing expenses - patents	1,001	987	3,497	6,643
Amortization of patents	1,174	863	3,522	2,337
Other portfolio expenses (income)	-	(475)	(308)	175
Total portfolio operations	14,556	2,186	20,409	14,494
Net portfolio income (loss)	4,910	(475)	4,990	(3,936)
General and administrative expenses ⁽¹⁾	7,692	4,630	18,089	12,048
Operating loss	(2,782)	(5,105)	(13,099)	(15,984)
Other income (expense):				
Change in fair value of investment, net (Note 5)	(3,081)	(4,266)	3,704	9,622
Loss on sale of investment (Note 5)	-	(915)	(2,762)	(8,147)
Impairment of other investment	-	-	-	(8,195)
Gain on disposal of other investment	-	2,000	-	2,000
Change in fair value of the Series A and B warrants and embedded derivatives	20,672	-	(46,612)	-
Change in fair value of equity securities derivative and forward contract	(64,011)	-	17,542	-
Gain on sale of prepaid investment and derivative	2,845	-	2,845	-
Change in fair value of trading securities and equity securities - private	84,499	(482)	81,907	132
Gain (loss) on sale of trading securities	2,737	238	(4,272)	226
Loss on foreign currency exchange	(48)	(106)	(4,938)	(106)
Interest expense on Senior Secured Notes	(2,410)	-	(3,178)	-
Interest income and other	10	1,028	811	3,012
Total other income (expense)	41,213	(2,503)	45,047	(1,456)
Income (loss) before income taxes	38,431	(7,608)	31,948	(17,440)
Income tax benefit (expense)	(83)	-	1,257	(323)
Net income (loss) including noncontrolling interests in subsidiaries	38,348	(7,608)	33,205	(17,763)
Net loss attributable to noncontrolling interests in subsidiaries	-	-	-	14
Net income (loss) attributable to Acacia Research Corporation	\$ 38,348	\$ (7,608)	\$ 33,205	\$ (17,749)
Net income (loss) attributable to common stockholders - basic	\$ 30,529	\$ (7,608)	\$ 24,838	\$ (17,749)
Basic net income (loss) per common share	\$ 0.63	\$ (0.15)	\$ 0.51	\$ (0.36)
Weighted average number of shares outstanding - basic	48,467,885	49,828,361	48,949,706	49,727,385
Net income (loss) attributable to common stockholders - diluted	\$ 29,204	\$ (7,608)	\$ 21,380	\$ (17,749)
Diluted net income (loss) per common share	\$ 0.32	\$ (0.15)	\$ 0.36	\$ (0.36)
Weighted average number of shares outstanding - diluted	90,624,702	49,828,361	60,153,773	49,727,385

(1) General and administrative expenses were comprised of the following:

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2020	2019	2020	2019
General and administrative expenses	\$ 7,204	\$ 4,330	\$ 16,846	\$ 11,295
Non-cash stock compensation expense - G&A	488	300	1,243	753
Total general and administrative expenses	\$ 7,692	\$ 4,630	\$ 18,089	\$ 12,048

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

ACACIA RESEARCH CORPORATION
UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF SERIES A REDEEMABLE CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS'
EQUITY
(In thousands, except share data)

For the Three Months Ended September 30, 2020

	Series A Redeemable Convertible Preferred Stock		Common Stock		Treasury Stock	Additional Paid-in Capital	Accumulated Deficit	Noncontrolling Interests in Operating Subsidiaries	Total Stockholders' Equity
	Shares	Amount	Shares	Amount					
	Balance at June 30, 2020	350,000	\$ 9,400	49,306,137					
Net income (loss) attributable to Acacia Research Corporation	-	-	-	-	-	-	38,348	-	38,348
Accretion of Series A Redeemable Convertible Preferred Stock to redemption value	-	734	-	-	-	(734)	-	-	(734)
Dividend on Series A Redeemable Convertible Preferred Stock	-	-	-	-	-	(467)	-	-	(467)
Compensation expense for share-based awards, net of forfeitures	-	-	(26,684)	-	-	488	-	-	488
Balance at September 30, 2020	350,000	\$ 10,134	49,279,453	\$ 49	\$ (43,270)	\$ 650,130	\$ (406,451)	\$ 1,833	\$ 202,291

For the Three Months Ended September 30, 2019

	Series A Redeemable Convertible Preferred Stock		Common Stock		Treasury Stock	Additional Paid-in Capital	Accumulated Deficit	Noncontrolling Interests in Operating Subsidiaries	Total Stockholders' Equity
	Shares	Amount	Shares	Amount					
	Balance at June 30, 2019	-	\$ -	50,132,871					
Net income (loss) attributable to Acacia Research Corporation	-	-	-	-	-	-	(7,608)	-	(7,608)
Compensation expense for share-based awards, net of forfeitures	-	-	210,434	-	-	300	-	-	300
Balance at September 30, 2019	-	\$ -	50,343,305	\$ 50	\$ (39,272)	\$ 651,988	\$ (440,290)	\$ 1,833	\$ 174,309

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

ACACIA RESEARCH CORPORATION
UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF SERIES A REDEEMABLE CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY
(In thousands, except share data)

For the Nine Months Ended September 30, 2020

	Series A Redeemable Convertible Preferred Stock		Common Stock					Treasury Stock	Additional Paid-in Capital	Accumulated Deficit	Noncontrolling Interests in Operating Subsidiaries	Total Stockholders' Equity
			Shares	Amount	Shares	Amount	Shares					
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount
Balance at December 31, 2019	350,000	\$ 8,089	50,370,987	\$ 50	\$ (39,272)	\$ 652,003	\$ (439,656)	\$ 1,833	\$ 174,958			
Net income (loss) attributable to Acacia Research Corporation	-	-	-	-	-	-	33,205	-	-	-	33,205	
Accretion of Series A Redeemable Convertible Preferred Stock to redemption value	-	2,045	-	-	-	(2,045)	-	-	-	-	(2,045)	
Dividend on Series A Redeemable Convertible Preferred Stock	-	-	-	-	-	(1,119)	-	-	-	-	(1,119)	
Stock options exercised	-	-	-	-	-	48	-	-	-	-	48	
Compensation expense for share-based awards, net of forfeitures	-	-	593,003	-	-	1,243	-	-	-	-	1,243	
Repurchase of common stock	-	-	(1,684,537)	(1)	(3,998)	-	-	-	-	-	(3,999)	
Balance at September 30, 2020	350,000	\$ 10,134	49,279,453	\$ 49	\$ (43,270)	\$ 650,130	\$ (406,451)	\$ 1,833	\$ 202,291			

For the Nine Months Ended September 30, 2019

	Series A Redeemable Convertible Preferred Stock		Common Stock					Treasury Stock	Additional Paid-in Capital	Accumulated Deficit	Noncontrolling Interests in Operating Subsidiaries	Total Stockholders' Equity
			Shares	Amount	Shares	Amount	Shares					
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount
Balance at December 31, 2018	-	\$ -	49,639,319	\$ 50	\$ (39,272)	\$ 651,156	\$ (422,541)	\$ 1,847	\$ 191,240			
Net income (loss) attributable to Acacia Research Corporation	-	-	-	-	-	-	(17,749)	-	-	-	(17,749)	
Stock options exercised	-	-	25,136	-	-	79	-	-	-	-	79	
Compensation expense for share-based awards, net of forfeitures	-	-	678,850	-	-	753	-	-	-	-	753	
Net income attributable to noncontrolling interests in subsidiaries	-	-	-	-	-	-	-	-	-	(14)	(14)	
Balance at September 30, 2019	-	\$ -	50,343,305	\$ 50	\$ (39,272)	\$ 651,988	\$ (440,290)	\$ 1,833	\$ 174,309			

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

ACACIA RESEARCH CORPORATION
UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	Nine Months Ended September 30,	
	2020	2019
Cash flows from operating activities:		
Net income (loss) including noncontrolling interests in subsidiaries	\$ 33,205	\$ (17,763)
Adjustments to reconcile net income (loss) including noncontrolling interests in subsidiaries to net cash provided by (used in) operating activities:		
Change in fair value of investment, net (Note 5)	(3,704)	(9,622)
Loss on sale of investment (Note 5)	2,762	8,147
Impairment of other investment	–	8,195
Gain on disposal of other investment (Note 5)	–	(2,000)
Depreciation and amortization	3,609	2,344
Amortization of debt discount and issuance costs	955	–
Change in fair value of Series A redeemable convertible preferred stock embedded derivative	7,708	–
Change in fair value of Series A warrants	2,036	–
Change in fair value of Series B warrants	36,867	–
Non-cash stock compensation	1,243	753
Loss on foreign currency exchange	4,938	–
Change in fair value of trading securities and equity securities - private	(81,907)	(914)
Loss on sale of trading securities	4,272	–
Change in fair value of equity securities derivative and forward contract	(17,542)	–
Gain on sale of prepaid investment and derivative	(2,845)	–
Changes in assets and liabilities:		
Accounts receivable	248	31,085
Prepaid expenses and other assets	1,038	(983)
Accounts payable and accrued expenses	614	326
Royalties and contingent legal fees payable	12,052	(20,414)
Net cash provided by (used in) operating activities	<u>5,549</u>	<u>(846)</u>
Cash flows from investing activities:		
Patent acquisition costs	(13,780)	(4,420)
Sale of investment at fair value (Note 5)	1,460	6,260
(Purchase) Sale of other investments (Note 5)	–	2,000
Purchases of trading securities	(33,800)	(103,718)
Maturities and sales of trading securities	316,746	38,816
Purchases of prepaid investment	(276,275)	–
Equity securities derivative and forward contract acquisition cost	(3,989)	–
Purchases of property and equipment	(177)	(119)
Net cash used in investing activities	<u>(9,815)</u>	<u>(61,181)</u>
Cash flows from financing activities:		
Repurchase of common stock	(3,998)	–
Issuance of Senior Secured Notes, net of lender fee	110,437	–
Senior Secured Notes issuance costs paid to other parties	(496)	–
Dividend on Series A Redeemable Convertible Preferred Stock	(1,120)	–
Issuance of Series B warrants	4,600	–
Proceeds from exercise of stock options	48	79
Net cash provided by financing activities	<u>109,471</u>	<u>79</u>
Increase (decrease) in cash and cash equivalents and restricted cash	105,205	(61,948)
Cash and cash equivalents and restricted cash, beginning	<u>92,359</u>	<u>128,809</u>
Cash and cash equivalents and restricted cash, ending	<u>\$ 197,564</u>	<u>\$ 66,861</u>
Supplemental schedule of noncash investing activities:		
Acquisition of prepaid investment securities	<u>\$ 231,480</u>	<u>\$ –</u>

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

ACACIA RESEARCH CORPORATION

NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

1. DESCRIPTION OF BUSINESS AND BASIS OF PRESENTATION

Description of Business

As used herein, “we,” “us,” “our,” “Acacia” and the “Company” refer to Acacia Research Corporation and/or its wholly and majority-owned and controlled operating subsidiaries, and/or where applicable, its management.

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

Acacia’s operating subsidiaries invest in, license and enforce patented technologies. Acacia’s operating subsidiaries partner with inventors and patent owners, applying their legal and technology expertise to patent assets to unlock the financial value in their patented inventions. In recent years, Acacia has also invested in technology companies. Acacia leverages its experience, expertise, data and relationships developed as a leader in the intellectual property (“IP”) industry to pursue these opportunities. In some cases, these opportunities will complement, and/or supplement Acacia’s primary licensing and enforcement business.

Acacia’s operating subsidiaries generate revenues and related cash flows from the granting of IP rights (hereinafter “IP Rights”) for the use of patented technologies that its operating subsidiaries control or own. Acacia’s operating subsidiaries assist patent owners with the prosecution and development of their patent portfolios, the protection of their patented inventions from unauthorized use, the generation of licensing revenue from users of their patented technologies and, where necessary, with the enforcement against unauthorized users of their patented technologies through the filing of patent infringement litigation.

Acacia’s operating subsidiaries are principals in the licensing and enforcement effort, obtaining control of the rights in the patent portfolio, or control of the patent portfolio outright. Acacia’s operating subsidiaries own or control the rights to multiple patent portfolios, which include U.S. patents and certain foreign counterparts, covering technologies used in a wide variety of industries.

Neither Acacia nor its operating subsidiaries invent new technologies or products; rather, Acacia depends upon the identification and investment in new patents, inventions and companies that own IP through its relationships with inventors, universities, research institutions, technology companies and others. If Acacia’s operating subsidiaries are unable to maintain those relationships and identify and grow new relationships, then they may not be able to identify new technology-based opportunities for sustainable revenue and/or revenue growth.

During the nine months ended September 30, 2020, Acacia obtained control of four new patent portfolios. During fiscal year 2019, Acacia obtained control of five new patent portfolios.

Basis of Presentation

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

The accompanying unaudited condensed consolidated financial statements 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 Form 10-Q and Rule 10-01 of Regulation S-X. Accordingly, certain information and footnotes required by U.S. GAAP in annual financial statements have been omitted or condensed in accordance with quarterly reporting requirements of the Securities and Exchange Commission ("SEC"). These interim unaudited condensed consolidated financial statements should be read in conjunction with the condensed consolidated financial statements and notes thereto for the year ended December 31, 2019, as reported by Acacia in its Annual Report on Form 10-K filed with the SEC on March 16, 2020, as well as in our other public filings with the SEC. The condensed consolidated interim financial statements of Acacia include all adjustments of a normal recurring nature which, in the opinion of management, are necessary for a fair statement of Acacia's consolidated financial position as of September 30, 2020, and results of its operations and its cash flows for the interim periods presented. The consolidated results of operations for the three and nine months ended September 30, 2020 are not necessarily indicative of the results to be expected for the entire fiscal year.

Use of Estimates

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amount of assets and liabilities and disclosure of contingent assets and liabilities at the date of the condensed consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from these estimates. Acacia believes that, of the significant accounting policies described herein, the accounting policies associated with revenue recognition, the valuation of the equity instruments, the valuation of Series A redeemable convertible preferred stock (the "Series A Redeemable Convertible Preferred Stock") embedded derivatives, Series A warrants (the "Series A Warrants"), Series B warrants (the "Series B Warrants"), equity securities derivative and forward contract, stock-based compensation expense, impairment of patent related intangible assets, the determination of the economic useful life of amortizable intangible assets, income taxes and valuation allowances against net deferred tax assets, require its most difficult, subjective or complex judgments.

Reclassifications

Certain reclassifications have been made to the prior fiscal year financial information to conform with the current fiscal year presentation. Such reclassifications had no impact on net income or cash flows.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Revenue Recognition

Revenue is recognized upon transfer of control of promised bundled IP Rights and other contractual performance obligations to licensees in an amount that reflects the consideration we expect to receive in exchange for those IP Rights. Revenue contracts that provide promises to grant the right to use IP Rights as they exist at the point in time at which the IP Rights are granted, are accounted for as performance obligations satisfied at a point in time and revenue is recognized at the point in time that the applicable performance obligations are satisfied and all other revenue recognition criteria have been met.

For the periods presented, revenue contracts executed by the Company primarily provided for the payment of contractually determined, one-time, paid-up license fees in consideration for the grant of certain IP Rights for patented technologies owned or controlled by Acacia. Revenues also included license fees from sales-based revenue contracts, the majority of which were originally executed in prior periods, that provide for the payment of quarterly license fees based on quarterly sales of applicable product units by licensees ("Recurring Revenue Agreements"). Revenues may also include court ordered settlements or awards related to our patent portfolio. IP Rights granted included the following, as applicable: (i) the grant of a non-exclusive, retroactive and future license to manufacture and/or sell products covered by patented technologies, (ii) a covenant-not-to-sue, (iii) the release of the licensee from certain claims, and (iv) the dismissal of any pending litigation. The IP Rights granted were perpetual in nature, extending until the legal expiration date of the related patents. The individual IP Rights are not accounted for as separate performance obligations, as (i) the nature of the promise, within the context of the contract, is to transfer combined items to which the promised IP Rights are inputs and (ii) the Company's promise to transfer each individual IP right described above to the customer is not separately identifiable from other promises to transfer IP Rights in the contract.

Since the promised IP Rights are not individually distinct, the Company combines each individual IP Right in the contract into a bundle of IP rights that is distinct and accounts for all of the IP Rights promised in the contract as a single performance obligation. The IP Rights granted generally are “functional IP rights” that have significant standalone functionality. Acacia’s subsequent activities do not substantively change that functionality and do not significantly affect the utility of the IP to which the licensee has rights. Acacia’s operating subsidiaries have no further obligation with respect to the grant of IP Rights, including no express or implied obligation to maintain or upgrade the technology, or provide future support or services. The contracts provide for the grant (i.e., transfer of control) of the licenses, covenants-not-to-sue, releases, and other significant deliverables upon execution of the contract. Licensees legally obtain control of the IP Rights upon execution of the contract. As such, the earnings process is complete and revenue is recognized upon the execution of the contract, when collectability is probable and all other revenue recognition criteria have been met. Revenue contracts generally provide for payment of contractual amounts within 30-90 days of execution of the contract, or the end of the quarter in which the sale or usage occurs for Recurring Revenue Agreements. Contractual payments made by licensees are generally non-refundable.

For sales-based royalties, the Company includes in the transaction price some or all of an amount of estimated variable consideration to the extent that it is probable that a significant reversal in the amount of cumulative revenue recognized will not occur when the uncertainty associated with the variable consideration is subsequently resolved. Notwithstanding, revenue is recognized for a sales-based royalty promised in exchange for a license of IP Rights when the later of (i) the subsequent sale or usage occurs, or (ii) the performance obligation to which some or all of the sales-based royalty has been allocated has been satisfied. Estimates are generally based on historical levels of activity, if available.

Revenues from contracts with significant financing components (either explicit or implicit) are recognized at an amount that reflects the price that a licensee would have paid if the licensee had paid cash for the IP Rights when they transfer to the licensee. In determining the transaction price, the Company adjusts the promised amount of consideration for the effects of the time value of money. As a practical expedient, the Company does not adjust the promised amount of consideration for the effects of a significant financing component if the Company expects, at contract inception, that the period between when the entity transfers promised IP Rights to a customer and when the customer pays for the IP Rights will be one year or less.

In general, the Company is required to make certain judgments and estimates in connection with the accounting for revenue contracts with customers. Such areas may include identifying performance obligations in the contract, estimating the timing of satisfaction of performance obligations, determining whether a promise to grant a license is distinct from other promised goods or services, evaluating whether a license transfers to a customer at a point in time or over time, allocating the transaction price to separate performance obligations, determining whether contracts contain a significant financing component, and estimating revenues recognized at a point in time for sales-based royalties.

Revenues were composed of the following for the periods presented:

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2020	2019	2020	2019
	(In thousands)			
Paid-up Revenue Agreements	\$ 19,385	\$ 1,203	\$ 24,477	\$ 6,067
Recurring Revenue Agreements	81	508	922	4,491
Total Revenue	<u>\$ 19,466</u>	<u>\$ 1,711</u>	<u>\$ 25,399</u>	<u>\$ 10,558</u>

Refer to “*Inventor Royalties and Contingent Legal Expenses*” below for information on related direct costs of revenues.

Portfolio Operations

Cost of revenues include the costs and expenses incurred in connection with Acacia’s patent licensing and enforcement activities, including inventor royalties paid to patent owners, contingent legal fees paid to external patent counsel, other patent-related legal expenses paid to external patent counsel, licensing and enforcement related research, consulting and other expenses paid to third-parties and the amortization of patent-related investment costs. These costs are included under the caption “Portfolio operations” in the accompanying condensed consolidated statements of operations.

Inventor Royalties and Contingent Legal Expenses

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

Contingent legal fees are expensed in the condensed consolidated statements of operations in the period that the related revenues are recognized. In instances where there are no recoveries from potential infringers, no contingent legal fees are paid; however, Acacia's operating subsidiaries may be liable for certain out of pocket legal costs incurred pursuant to the underlying legal services agreement.

Inventor royalty and contingent legal agreements typically provide for payment by the Company of contractual amounts 30 days subsequent to the fiscal quarter end during which related license fee payments are received from licensees by the Company.

Concentrations

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

One licensee accounted for 98% of revenues recognized during the three months ended September 30, 2020, and four licensees accounted for 75%, 9%, 8% and 4% of revenues recognized during the nine months ended September 30, 2020. Three licensees individually accounted for 52%, 21% and 12% of revenues recognized during the three months ended September 30, 2019, and three licensees individually accounted for 46%, 23% and 14% of revenues recognized during the nine months ended September 30, 2019.

The Company does not have any material foreign operations. Based on the jurisdiction of the entity obligated to satisfy payment obligations pursuant to the applicable revenue arrangement, for the three and nine months ended September 30, 2020, 0.1% and 5%, respectively, of revenues were attributable to licensees domiciled in foreign jurisdictions. For the three and nine months ended September 30, 2019, 75% and 38%, respectively, of revenues were attributable to licensees domiciled in foreign jurisdictions.

Four licensees individually represented approximately 57%, 25%, 4% and 3% of accounts receivable at September 30, 2020. Two licensees individually represented approximately 70% and 17% of accounts receivable at December 31, 2019.

Patents

Patents include the cost of patents or patent rights (hereinafter, collectively "patents") acquired from third-parties or obtained in connection with business combinations. Patent costs are amortized utilizing the straight-line method over their remaining economic useful lives. Refer to Note 4 for additional information regarding our patents.

Impairment of Long-lived Assets

Acacia reviews long-lived assets and intangible assets for potential impairment annually (quarterly for patents) and when events or changes in circumstances indicate the carrying amount of an asset may not be recoverable. In the event the expected undiscounted future cash flows resulting from the use of the asset is less than the carrying amount of the asset, an impairment loss is recorded in an amount equal to the excess of the asset's carrying value over its fair value. If an asset is determined to be impaired, the loss is measured based on quoted market prices in active markets, if available. If quoted market prices are not available, the estimate of fair value is based on various valuation techniques, including a discounted value of estimated future cash flows. In the event that management decides to no longer allocate resources to a patent portfolio, an impairment loss equal to the remaining carrying value of the asset is recorded. Refer to Note 4 for additional information.

Fair value is generally estimated using the "Income Approach," focusing on the estimated future net income-producing capability of the patent portfolios over their estimated remaining economic useful life. Estimates of future after-tax cash flows are converted to present value through "discounting," including an estimated rate of return that accounts for both the time value of money and investment risk factors. Estimated cash inflows are typically based on estimates of reasonable royalty rates for the applicable technology, applied to estimated market data. Estimated cash outflows are based on existing contractual obligations, such as contingent legal fee and inventor royalty obligations, applied to estimated license fee revenues, in addition to other estimates of out-of-pocket expenses associated with a specific patent portfolio's licensing and enforcement program. The analysis also contemplates consideration of current information about the patent portfolio including, status and stage of litigation, periodic results of the litigation process, strength of the patent portfolio, technology coverage and other pertinent information that could impact future net cash flows.

Cash and Cash Equivalents

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

Long Term Restricted Cash

Long-term restricted cash relates to the proceeds received from the issuance of Series A Redeemable Convertible Preferred Stock which are held in an escrow account. The amounts are to be released to the Company upon, among other things, (i) the consummation of a suitable investment or acquisition by the Company or (ii) the conversion of Series A Redeemable Convertible Preferred Stock into common stock.

Prepaid Investment

Prepaid investment relates to the cash transferred to an escrow account in connection with a Transaction Agreement with LF Equity Income Fund ("Seller"), pursuant to which the Company will purchase from Seller certain equity securities. Refer to Note 14 for additional information on the Transaction Agreement. The amounts are to be released to Seller upon transfer of the specified equity securities at set prices at various future dates following various terms and conditions per the Transaction Agreement.

Equity Securities Derivative and Forward Contract

The equity security forward contract includes both private and public equity securities not yet transferred, as of September 30, 2020, under the Company's Transaction Agreement with Seller. Refer to Note 14 for additional information on the agreement. The public company equity security forward contracts are accounted for as derivatives and are carried at fair market value with changes in fair market value recorded in the condensed consolidated statements of operations in other income (expense). The private company equity security forward contracts do not meet the definition of a derivative as the underlying equity securities are not readily convertible to cash. Therefore, as the forward contracts do not have readily determinable fair value, these forward contracts are reported at cost minus impairment, if any, plus or minus changes resulting from observable price changes in orderly transactions involving securities similar to those underlying the forward contract. Changes in fair market value are reported in the condensed consolidated statements of operations in other income (expense).

Trading Securities- Debt

Investments in debt securities are reported at fair value on a recurring basis, with related realized and unrealized gains and losses recorded in the condensed consolidated statements of operations in other income (expense). Realized and unrealized gains and losses are recorded based on the specific identification method. Interest is included in the condensed consolidated statements of operations in other income (expense). Accrued interest is included in the trading securities balance on the condensed consolidated balance sheets.

Trading Securities - Equity

Investments in equity securities are reported at fair value on a recurring basis, with related realized and unrealized gains and losses in the value of such securities recorded in the condensed consolidated statements of operations in other income (expense). Dividend income is included in the condensed consolidated statements of operations in other income (expense).

Trading securities for the periods presented were comprised of the following:

Security Type	Cost	Gross Unrealized Gain	Gross Unrealized Loss	Fair Value
	(In thousands)			
September 30, 2020:				
Trading securities - equity	\$ 23,851	\$ 4,218	\$ (3,598)	\$ 24,471
December 31, 2019:				
Trading securities - debt	\$ 93,712	\$ 143	\$ (12)	\$ 93,843
Trading securities - equity	17,674	211	(745)	17,140
	<u>\$ 111,386</u>	<u>\$ 354</u>	<u>\$ (757)</u>	<u>\$ 110,983</u>

Fair Value Measurements

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

(i) **Level 1 – Observable Inputs:** Quoted prices in active markets for identical investments;

(ii) **Level 2 – Pricing Models with Significant Observable Inputs:** Other significant observable inputs, including quoted prices for similar investments, interest rates, credit risk, etc.; and

(iii) **Level 3 – Unobservable Inputs:** Significant unobservable inputs, including the entity's own assumptions in determining the fair value of investments.

Whenever possible, the Company is required to use observable market inputs (Level 1 – quoted market prices) when measuring fair value. In such cases, the level at which the fair value measurement falls is determined based on the lowest level input that is significant to the fair value measurement. The assessment of the significance of a particular input requires judgment and considers factors specific to the asset or liability being measured. In certain cases, inputs used to measure fair value fall into different levels of the fair value hierarchy. Financial assets and liabilities measured at fair value on a recurring basis were as follows:

	Level 1	Level 2	Level 3
	(In thousands)		
Assets as of September 30, 2020:			
Trading securities - equity	\$ 24,471	\$ –	\$ –
Equity securities derivative	17,818	–	–
Investment at fair value - warrants (Note 5)	–	982	–
Total recurring fair value measurements as of September 30, 2020	<u>\$ 42,289</u>	<u>\$ 982</u>	<u>\$ –</u>

Assets as of December 31, 2019:			
Trading securities - debt	\$ –	\$ 93,843	\$ –
Trading securities - equity	17,140	–	–
Investment at fair value - warrants (Note 5)	–	757	–
Investment at fair value - common stock (Note 5)	743	–	–
Total recurring fair value measurements as of December 31, 2019	<u>\$ 17,883</u>	<u>\$ 94,600</u>	<u>\$ –</u>

Liabilities as of September 30, 2020:			
Series A warrants	\$ –	\$ 5,604	\$ –
Series B warrants	–	–	42,796
Embedded derivative liability	–	–	25,682
Total liabilities as of September 30, 2020	<u>\$ –</u>	<u>\$ 5,604</u>	<u>\$ 68,478</u>

Liabilities as of December 31, 2019:			
Series A warrants	\$ –	\$ 3,568	\$ –
Embedded derivative liability	–	–	17,974
Total liabilities as of December 31, 2019	<u>\$ –</u>	<u>\$ 3,568</u>	<u>\$ 17,974</u>

The following table sets forth a summary of the changes in the estimated fair value of the Company's Level 3 liabilities, which are measured at fair value as a on a recurring basis:

	Series A Preferred Stock Embedded Derivative Liability	Series B Warrants Liability
	(In thousands)	
Opening balance as of December 31, 2019	\$ 17,974	\$ –
Issuance of Series B warrants	–	4,600
Remeasurement to fair value	7,708	38,196
Balance as of September 30, 2020	<u>\$ 25,682</u>	<u>\$ 42,796</u>

Series A Warrants

The fair value of the Series A Warrants is estimated using a Black-Scholes option-pricing model. The fair value of the Series A Warrants as of September 30, 2020 was estimated based on the following assumptions: volatility of 32 percent, risk-free rate of 0.47 percent, term of 7.04 years and a dividend yield of 0 percent. Refer to Notes 10 and 11 for additional information.

Series B Warrants

The fair value of the Series B Warrants is estimated using Monte Carlo valuation technique. The fair value of the Series B Warrants as of September 30, 2020 was estimated based on event probabilities of future exercise scenarios and the following weighted-average assumptions: (1) volatility of 32 percent, risk-free rate of 0.48 percent, term of 7.12 years, a dividend yield of 0 percent, and a discount for lack of marketability of 10 percent, and (2) volatility of 51 percent, risk-free rate of 0.13 percent, term of 1.9 years and a dividend yield of 0 percent, and a discount for lack of marketability of 10 percent. Refer to Notes 10 and 12 for additional information.

Embedded derivatives

Embedded derivatives that are required to be bifurcated from their host contract are valued separately from host instrument. A binomial lattice framework is used to estimate the fair value of the embedded derivative in the Series A Redeemable Convertible Preferred Stock. The binomial model utilizes the Tsiveriotis and Fernandes implementation in which a convertible instrument is split into two separate components: a cash-only component which is subject to the selected risk-adjusted discount rate and an equity component which is subject only to the risk-free rate. The model considers the (i) implied volatility of the value of our common stock, (ii) appropriate risk-free interest rate, (iii) credit spread, (iv) dividend yield, (v) dividend accrual (and a step-up in rates), and (vi) event probabilities of the various conversion and redemption scenarios.

The implied volatility of the Company's common stock is estimated based on a haircut applied to the historical volatility. A volatility haircut is a concept used to describe a commonly observed occurrence in which the volatility implied by market prices involving options, warrants, and convertible debt is lower than historical actual realized volatility. The assumed base case term used in the valuation model is the period remaining until November 15, 2027, the maturity date. The risk-free interest rate is based on the yield on the U.S. Treasury with a remaining term equal to the expected term of the conversion and early redemption options. The significant assumptions utilized in the Company's valuation of the embedded derivative at September 30, 2020 are as follows: volatility of 32 percent, risk-free rate of 0.47 percent, a credit spread of 21 percent and a dividend yield of 0 percent. The fair value measurement of the embedded derivative is sensitive to these assumptions and changes in these assumptions could result in a materially different fair value measurement. Refer to Note 10 for additional information.

Investments at Fair Value

On an individual investment basis, Acacia may elect to account for investments in companies where the Company has the ability to exercise significant influence over operating and financial policies of the investee, at fair value. If the fair value method is applied to an investment that would otherwise be accounted for under the equity method of accounting, it is applied to all of the financial interests in the same entity that are eligible items (i.e., common stock and warrants). We elected the fair value method for our investment in Veritone upon acquisition of the investment. As of September 30, 2020, our investment in Veritone warrants totaled \$982,000.

Other Investments

Equity investments in common stock and in-substance common stock without readily determinable fair values in companies over which the Company has the ability to exercise significant influence, are accounted for using the equity method of accounting. Acacia includes its proportionate share of earnings and/or losses of its equity method investees in equity in earnings (losses) of investees in the condensed consolidated statements of operations.

Investments in preferred stock with substantive liquidation preferences are accounted for at cost (subject to impairment considerations, as described below, if any), as adjusted for the impact of changes resulting from observable price changes in orderly transactions for identical or similar investments of the same issuer. In-substance common stock is an investment in an entity that has risk and reward characteristics that are substantially similar to that entity's common stock. An investment in preferred stock with substantive liquidation preferences over common stock, is not substantially similar to common stock, and therefore is not considered in-substance common stock. A liquidation preference is substantive if the investment has a stated liquidation preference that is significant, from a fair value perspective, in relation to the purchase price of the investment. A liquidation preference in an investee that has sufficient subordinated equity from a fair value perspective is substantive because, in the event of liquidation, the investor will not participate in substantially all of the investee's losses, if any.

The initial determination of whether an investment is substantially similar to common stock is made on the initial date of investment if the Company has the ability to exercise significant influence over the operating and financial policies of the investee. That determination is reconsidered if:

- (i) contractual terms of the investment are changed,
- (ii) there is a significant change in the capital structure of the investee, including the investee's receipt of additional subordinated financing, or
- (iii) the Company obtains an additional interest in an investment, resulting in the method of accounting for the cumulative interest being based on the characteristics of the investment at the date at which the Company obtains the additional interest.

Refer to Note 5 for additional information.

Stock-Based Compensation

The compensation cost for all stock-based awards is measured at the grant date, based on the fair value of the award, and is recognized as an expense on a straight-line basis over the employee's requisite service period (generally the vesting period of the equity award) which is generally two to four years. The fair value of restricted stock and restricted stock unit awards is determined by the product of the number of shares or units granted and the grant date market price of the underlying common stock. The fair value of each option award is estimated on the date of grant using a Black-Scholes option-pricing model. Forfeitures are accounted for as they occur.

Restricted stock units granted in September 2019 with market-based vesting conditions vest based upon the Company achieving specified stock price targets over a three-year period. The effect of a market condition is reflected in the estimate of the grant-date fair value of the options utilizing a Monte Carlo valuation technique. Compensation cost is recognized with a market-based vesting condition provided that the requisite service is rendered, regardless of when, if ever, the market condition is satisfied. Assumptions utilized in connection with the Monte Carlo valuation technique included: estimated risk-free interest rate of 1.38 percent; term of 3.00 years; expected volatility of 38 percent; and expected dividend yield of 0 percent. The risk-free interest rate was determined based on the yields available on U.S. Treasury zero-coupon issues. The expected stock price volatility was determined using historical volatility. The expected dividend yield was based on expectations regarding dividend payments.

Profits Interest Units ("Units") were accounted for in accordance with Accounting Standards Codification ("ASC") 718-10, "Compensation - Stock Compensation." The vesting conditions did not meet the definition of service, market or performance conditions, as defined in ASC 718. As such, the Units were classified as liability awards. Compensation expense was adjusted for changes in fair value prorated for the portion of the requisite service period rendered. Initially, compensation expense was recognized on a straight-line basis over the employee's requisite service period (generally the vesting period of the equity award) which was five years. Upon full vesting of the award, which occurred during the three months ended September 30, 2017, previously unrecognized compensation expense was immediately recognized in the period. The Company has a purchase option to purchase the vested Units that are not otherwise forfeited after termination of continuous service. The exercise price of the purchase option is the fair market value of the Units on the date of termination of continuous service. As of September 30, 2020, the Units totaled \$591,000, which was their fair value as of December 31, 2018 after termination of service.

Treasury Stock

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

Impairment of Investments

Acacia reviews its investments quarterly for indicators of other-than-temporary impairment. This determination requires significant judgment. In making this judgment, Acacia considers available quantitative and qualitative evidence in evaluating potential impairment of its investments. If the cost of an investment exceeds its fair value, Acacia evaluates, among other factors, general market conditions and the duration and extent to which the fair value is less than cost. Acacia also considers specific adverse conditions related to the financial health of and business outlook for the investee, including industry and sector performance, changes in technology, and operational and financing cash flow factors. Once a decline in fair value is determined to be other-than-temporary, an impairment charge is recorded in the condensed consolidated statements of operations and a new cost basis in the investment is established.

Income Taxes

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

The provision for income taxes for interim periods is determined using an estimate of Acacia's annual effective tax rate, adjusted for discrete items, if any, that are taken into account in the relevant period. Each quarter, Acacia updates the estimate of the annual effective tax rate, and if the estimated tax rate changes, a cumulative adjustment is recorded.

The Company's effective tax rates were 0% and (4%) for the three and nine months ended September 30, 2020, respectively and 0% and (2%) for the three and nine months ended September 30, 2019, respectively. Tax benefit (expense) for the periods presented primarily reflects the impact of state taxes and foreign taxes withholding or refund incurred on revenue agreements executed with third-party licensees domiciled in foreign jurisdictions. The Company has recorded full valuation allowance against our net deferred tax assets as of September 30, 2020 and 2019. These assets primarily consist of foreign tax credits, capital loss carryforwards and net operating loss carryforwards.

3. INCOME (LOSS) PER SHARE

The following table presents the shares of common stock outstanding used in the calculation of basic and diluted net income (loss) per share:

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2020	2019	2020	2019
(In thousands, except share and per share information)				
Numerator:				
Net income (loss) attributable to Acacia Research Corporation	38,348	(7,608)	33,205	(17,749)
Dividend on Series A redeemable convertible preferred stock	(467)	–	(1,118)	–
Accretion of Series A redeemable convertible preferred stock	(733)	–	(2,045)	–
Undistributed earnings allocated to participating securities	(6,619)	–	(5,204)	–
Net income (loss) attributable to common stockholders - basic	<u>30,529</u>	<u>(7,608)</u>	<u>24,838</u>	<u>(17,749)</u>
Add: Dividend on Series A redeemable convertible preferred stock	467	–	–	–
Add: Accretion of Series A redeemable convertible preferred stock	733	–	–	–
Less: Change in fair value of Series A redeemable convertible preferred stock embedded derivative	(3,831)	–	–	–
Less: Change in fair value of Series A warrants	(1,348)	–	(1,348)	–
Less: Change in fair value of dilutive Series B warrants	(5,557)	–	(5,557)	–
Add: Interest expense associated with Starboard Notes, net of tax	1,889	–	1,889	–
Add: Undistributed earnings allocated to participating securities	6,619	–	5,204	–
Reallocation of undistributed earnings to participating securities	(296)	–	(3,645)	–
Net income (loss) attributable to common stockholders - diluted	<u>29,204</u>	<u>(7,608)</u>	<u>21,380</u>	<u>(17,749)</u>
Denominator:				
Weighted-average shares used in computing net income (loss) per share attributable to common stockholders - basic	48,467,885	49,828,361	48,949,706	49,727,385
Potentially dilutive common shares:				
Series A Preferred Stock	9,589,041	–	–	–
Restricted stock units	728,936	–	598,328	–
Employee stock options	21,624	–	–	–
Series A Warrants	310,367	–	103,456	–
Series B Warrants	31,506,849	–	10,502,283	–
Weighted-average shares used in computing net income (loss) per share attributable to common stockholders - diluted	<u>90,624,702</u>	<u>49,828,361</u>	<u>60,153,773</u>	<u>49,727,385</u>
Basic net income (loss) per common share	<u>\$ 0.63</u>	<u>\$ (0.15)</u>	<u>\$ 0.51</u>	<u>\$ (0.36)</u>
Diluted net income (loss) per common share	<u>\$ 0.32</u>	<u>\$ (0.15)</u>	<u>\$ 0.36</u>	<u>\$ (0.36)</u>
Anti-dilutive potential common shares excluded from the computation of diluted net income (loss) per common share:				
Equity-based incentive awards	191,312	442,864	310,083	442,864
Series A warrants	–	–	–	–
Series B warrants	68,493,151	–	68,493,151	–
Total	<u>68,684,463</u>	<u>442,864</u>	<u>68,803,234</u>	<u>442,864</u>

4. PATENTS

Acacia's only identifiable intangible assets at September 30, 2020 and December 31, 2019 are patents and patent rights. Patent-related accumulated amortization totaled \$326,296,000 and \$322,774,000 as of September 30, 2020 and December 31, 2019, respectively. Acacia's patents have remaining estimated economic useful lives ranging from three to fifty-five months. The weighted-average remaining estimated economic useful life of Acacia's patents is approximately four years.

The following table presents the scheduled annual aggregate amortization expense as of September 30, 2020:

For the years ending December 31,	
(In thousands)	
Remainder of 2020	\$ 1,158
2021	4,451
2022	4,451
2023	4,376
2024	3,005
Thereafter	630
	<u>\$ 18,071</u>

5. INVESTMENTS

Investment at Fair Value

During 2016 and 2017, Acacia made certain investments in Veritone, Inc. ("Veritone"). As a result of these transactions, Acacia received an aggregate total of 4,119,521 shares of Veritone common stock and warrants to purchase a total of 1,120,432 shares of Veritone common stock at an exercise price of \$13.61 per share expiring between 2020 and 2027. During the year ended December 31, 2018, Acacia sold 2,700,000 shares Veritone common stock and recorded a realized loss of \$19.1 million. During the year ended December 31, 2019, Acacia sold 1,121,071 shares Veritone common stock and recorded a realized loss of \$9.2 million. During the three months ended March 31, 2020, Acacia sold all remaining 298,450 shares Veritone common stock and recorded a realized loss of \$3.3 million.

During the three months ended June 30, 2020, Acacia exercised 154,312 warrants of the total 1,120,432 Veritone common stock purchase warrants at a price of \$13.61 per warrant, and then sold the 154,312 shares of Veritone stock received at \$17.23 per share, and recorded a realized gain of \$554,000. At September 30, 2020, the fair value of the 966,120 remaining warrants held by Acacia totaled \$982,000.

Changes in the fair value of Acacia's investment in Veritone are recorded as unrealized gains or losses in the condensed consolidated statements of operations. For the three and nine months ended September 30, 2020 and 2019, the accompanying condensed consolidated statements of operations reflected the following:

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2020	2019	2020	2019
	(In thousands)			
Change in fair value of investment, warrants	\$ (3,081)	(3,216)	\$ 225	\$ (822)
Change in fair value of investment, common stock	–	(1,050)	3,479	10,444
Gain on sale of investment, warrants	–	–	554	–
Loss on sale of investment, common stock	–	(915)	(3,316)	(8,147)
Net realized and unrealized gain (loss) on investment at fair value	<u>\$ (3,081)</u>	<u>\$ (5,181)</u>	<u>\$ 942</u>	<u>\$ 1,475</u>

6. COMMITMENTS AND CONTINGENCIES

Patent Enforcement

Certain of Acacia's operating subsidiaries are often required to engage in litigation to enforce their patents and patent rights. In connection with any of Acacia's operating subsidiaries' patent enforcement actions, it is possible that a defendant may request and/or a court may rule that an operating subsidiary has violated statutory authority, regulatory authority, federal rules, local court rules, or governing standards relating to the substantive or procedural aspects of such enforcement actions. In such event, a court may issue monetary sanctions against Acacia or its operating subsidiaries or award attorney's fees and/or expenses to a defendant(s), which could be material.

Facility Leases

The Company primarily leases office facilities under operating lease arrangements that will end in various years through July 2024.

On June 7, 2019, we entered into a building lease agreement (the "New Lease") with Jamboree Center 4 LLC (the "Landlord"). Pursuant to the New Lease, we have leased approximately 8,293 square feet of office space for our corporate headquarters in Irvine, California. The New Lease commenced on August 1, 2019. The term of the New Lease is 60 months from the commencement date, provides for annual rent increases, and does not provide us the right to early terminate or extend our lease terms.

The Company leased a facility under an operating lease agreement (the "Old Lease"), the term of which ended on January 31, 2020. The Company ceased using the facility in December 2018 and the subleased the facility for the remainder of the Old Lease term. All sublease income under the Old Lease was received and recorded in 2019. No sublease income on the Old Lease was recognized in 2020.

On January 7, 2020, we entered into a building lease agreement (the "New York Office Lease") with Sage Realty Corporation (the "New York Office Landlord"). Pursuant to the New York Office Lease, we have leased approximately 4,000 square feet of office space in New York, New York. The New York Office Lease commenced on February 1, 2020. The term of the New York Office Lease is 24 months from the commencement date, provides for annual rent increases, and does not provide us the right to early terminate or extend our lease terms.

Operating lease costs, net of sublease income, were \$ 174,000 and \$96,000 for the three months ended September 30, 2020 and 2019, respectively. Operating lease costs, net of sublease income, were \$459,000 and \$301,000 for the nine months ended September 30, 2020 and 2019, respectively.

The table below presents aggregate future minimum payments due under the New Lease and the New York Office Lease discussed above, reconciled to lease liabilities included in the condensed consolidated balance sheet as of September 30, 2020:

	Operating Leases	
	(In thousands)	
2020	\$	144
2021		589
2022		370
2023		364
2024		218
Total minimum payments	\$	1,685
Less: short-term lease liabilities		(584)
Long-term lease liabilities	\$	<u>1,101</u>

Other Matters

Acacia is subject to claims, counterclaims and legal actions that arise in the ordinary course of business. Management believes that the ultimate liability with respect to these claims and legal actions, if any, will not have a material effect on Acacia's condensed consolidated financial position, results of operations or cash flows.

On September 6, 2019, Slingshot Technologies, LLC ("Slingshot") filed a lawsuit in Delaware Chancery Court against the Company, Acacia Research Group, LLC, and Monarch Networking Solutions LLC (collectively, the "Acacia Entities"), Acacia board member Katharine Wolanyk, and Transpacific IP Group, Ltd. ("Transpacific"). Slingshot alleges that the Acacia Entities misappropriated its confidential and proprietary information, purportedly furnished to the Acacia Entities by Ms. Wolanyk, in acquiring a patent portfolio from Transpacific after Slingshot's exclusive option to purchase the same patent portfolio from Transpacific had already expired. Slingshot seeks monetary damages, as well as equitable and injunctive relief related to its alleged right to own the portfolio. The Acacia Entities maintain that Slingshot's allegations are baseless, that Ms. Wolanyk had no involvement in the acquisition, that the Acacia Entities neither had access to nor used Slingshot's information in acquiring the portfolio, that the Acacia Entities acquired the portfolio as a result of the independent efforts of its IP licensing group, and that Slingshot suffered no damages given its exclusive option to purchase the portfolio had already ended and it has proven itself incapable of closing on the portfolio purchase.

In a separate case, on December 6, 2017, the Federal Court of Canada allowed a counterclaim for invalidity of a patent asserted by Rapid Completions LLC and awarded costs payable by Rapid Completions LLC in an amount to be determined.

During the nine months ended September 30, 2020, operating expenses included a net income for settlement offset by contingency accruals totaling \$ 308,000, net of prior accruals. During the nine months ended September 30, 2019, operating expenses included expenses for settlement and contingency accruals totaling \$175,000. At September 30, 2020, our contingency accruals totaled \$ 1.4 million.

7. STOCKHOLDERS' EQUITY

Repurchases of Common Stock

On August 5, 2019, Acacia's Board of Directors approved a stock repurchase program, which authorized the purchase of up to \$ 10.0 million of the Company's common stock through open market purchases, through block trades, through 10b5-1 plans, or by means of private purchases, from time to time, through July 31, 2020. Stock repurchases for the periods presented, all of which were purchased as part of a publicly announced plan or program, were as follows:

	Total Number of Shares Purchased	Average Price paid per Share	Approximate Dollar Value of Shares that May Yet be Purchased under the Program	Plan Expiration Date
March 20, 2020 - March 31, 2020	576,898	\$2.28	\$8,686,000	July 31, 2020
April 1, 2020 - April 23, 2020	1,107,639	\$2.42	\$6,001,000	July 31, 2020
Totals for 2020	<u>1,684,537</u>	\$2.37		

In determining whether or not to repurchase any shares of Acacia's common stock, Acacia's Board of Directors consider such factors as the impact of the repurchase on Acacia's cash position, as well as Acacia's capital needs and whether there is a better alternative use of Acacia's capital. Acacia has no obligation to repurchase any amount of its common stock under the Stock Repurchase Program. Repurchases to date were made in the open market in compliance with applicable SEC rules. The authorization to repurchase shares presented an opportunity to reduce the outstanding share count and enhance stockholder value.

Tax Benefits Preservation Plan

On March 12, 2019, Acacia's Board of Directors announced that it had unanimously approved the adoption of a Tax Benefits Preservation Plan (the "Plan"). Our stockholders ratified the adoption of the Plan in July 2019. The purpose of the Plan is to protect the Company's ability to utilize potential tax assets, such as net operating loss carryforwards and tax credits to offset potential future taxable income.

The Plan is designed to reduce the likelihood that the Company will experience an ownership change by discouraging (i) any person or group from acquiring beneficial ownership of 4.9% or more of the Company's outstanding common stock and (ii) any existing stockholders who, as of the time of the first public announcement of the adoption of the Plan, beneficially own more than 4.9% of the Company's then-outstanding shares of the Company's common stock from acquiring additional shares of the Company's common stock (subject to certain exceptions). There is no guarantee, however, that the Plan will prevent the Company from experiencing an ownership change.

In connection with the adoption of the Plan, Acacia's Board of Directors authorized and declared a dividend distribution of one right for each outstanding share of the Company's common stock to stockholders of record at the close of business on March 16, 2019. On or after the distribution date, each right would initially entitle the holder to purchase one one-thousandth of a share of the Company's Series B Junior Participating Preferred Stock, \$0.001 par value for a purchase price of \$12.00.

The Company also has a provision in its Amended and Restated Certificate of Incorporation, as amended (the "Charter Provision") which generally prohibits transfers of its common stock that could result in an ownership change. Like the Plan, the purpose of the Charter Provision is to protect the Company's ability to utilize potential tax assets, such as net operating loss carryforwards and tax credits to offset potential future taxable income. The Charter Provision was approved by the Company's stockholders on July 15, 2019.

8. RECENT ACCOUNTING PRONOUNCEMENTS

Recent Accounting Pronouncements - Not Yet Adopted

In December 2019, the Financial Accounting Standards Board ("FASB") issued ASU No. 2019-12 Income Taxes (Topic 740) — Simplifying the Accounting for Income Taxes, to remove certain exceptions and improve consistency of application, including, among other things, requiring that an entity reflect the effect of an enacted change in tax laws or rates in the annual effective tax rate computation in the interim period that includes the enactment date. The amendments in this update will be effective for the Company beginning with fiscal year 2021, with early adoption permitted. Most amendments within the standard are required to be applied on a prospective basis, while certain amendments must be applied on a retrospective or modified retrospective basis. Management is currently evaluating the impact that the amendments in this update will have on the Company's condensed consolidated financial statements.

In June 2016, the FASB issued ASU No. 2016-13, Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments, to replace the incurred loss methodology with an expected credit loss model that requires consideration of a broader range of information to estimate credit losses over the lifetime of the asset, including current conditions and reasonable and supportable forecasts in addition to historical loss information, to determine expected credit losses. Pooling of assets with similar risk characteristics and the use of a loss model are also required. Also, in April 2019, the FASB issued ASU No. 2019-04, Codification Improvements to Topic 326, Financial Instruments—Credit Losses, Topic 815, Derivatives and Hedging, and Topic 825, Financial Instruments, to clarify the inclusion of recoveries of trade receivables previously written off when estimating an allowance for credit losses. The amendments in this update will be effective for the Company in fiscal year 2023, with early adoption permitted. Management is currently evaluating the impact that the amendments in this update will have on the Company's condensed consolidated financial statements.

9. FAIR VALUE DISCLOSURES

Acacia holds the following types of financial instruments at September 30, 2020 and December 31, 2019.

Trading securities - debt. Debt securities include corporate bonds with fair value that is determined by third party quotations from outside pricing services and/or computerized pricing models, which may be based on transactions, bids or estimates. Acacia classifies the fair value of corporate bonds within Level 2 of the valuation hierarchy.

Trading securities - equity. Equity securities include investments in public companies' common stock and are recorded at fair value based on the quoted market price of each share on the valuation date. The fair value of these securities are within Level 1 of the valuation hierarchy.

Equity securities derivative. Public company equity securities derivative are recorded at fair value based on the quoted market price of the underlying shares on the valuation date and settlement expectations. The fair value of these equity securities derivative are within Level 1 of the valuation hierarchy.

Investments at fair value - common stock. Acacia's equity investment in Veritone common stock is recorded at fair value based on the quoted market price of Veritone's common stock on the applicable valuation date (Level 1).

Investments at fair value - warrants. Warrants are recorded at fair value, as based on the Black-Scholes option-pricing model (Level 2).

Series A Warrants. Series A Warrants are recorded at fair value, using Black-Scholes option-pricing model (Level 2).

Series B Warrants. Series B Warrants are recorded at fair value, using Monte Carlo valuation technique (Level 3).

Embedded derivative liability. Embedded derivatives that are required to be bifurcated from their host contract are evaluated and valued separately from the host instrument. A binomial lattice framework is used to estimate the fair value of the embedded derivative in the Series A Redeemable Convertible Preferred Stock issued by the Company in 2019 (Level 3).

10. SERIES A REDEEMABLE CONVERTIBLE PREFERRED STOCK

On November 18, 2019, the Company entered into a Securities Purchase Agreement (the "Securities Purchase Agreement") with Starboard Value LP ("Starboard") and the investors set forth in the Securities Purchase Agreement (the "Buyers") pursuant to which the Company issued (i) 350,000 shares of Series A Redeemable Convertible Preferred Stock with a par value of \$0.001 per share and a stated value of \$100 per share, and (ii) Series A Warrants to purchase up to 5,000,000 shares of the Company's common stock to the Buyers. The Securities Purchase Agreement also established the terms of certain senior secured notes (the "Notes") and Series B Warrants that may be issued to the Buyers on a subsequent date. Refer to Notes 11 and 12 for additional information regarding the issuance of the Series A and Series B Warrants.

The Series A Redeemable Convertible Preferred Stock can be converted into a number of shares of common stock equal to (i) the stated value thereof plus accrued and unpaid dividends, divided by (ii) the conversion price of \$3.65 (subject to certain anti-dilution adjustments). Holders may elect to convert the Series A Redeemable Convertible Preferred Stock into common stock at any time. The Company may elect to convert the Series A Redeemable Convertible Preferred Stock into shares of Common Stock any time on or after November 15, 2025, provided that the closing price of the Company's common stock equals or exceeds 190% of the conversion price for 30 consecutive trading days and assuming certain other conditions of the common stock have been met.

Holders have the option to redeem all or a portion of the Series A Redeemable Convertible Preferred Stock during the periods of May 15, 2021 through August 15, 2021 and May 15, 2022 through August 15, 2022, provided that the Company has not issued at least \$50.0 million aggregate principal of Notes to the Buyers pursuant to the Securities Purchase Agreement. Holders also have the option to redeem all or a portion of the Series A Redeemable Convertible Preferred Stock during the period of November 15, 2024 through February 15, 2025. Additionally, holders have the option to redeem all or a portion of the Series A Redeemable Convertible Preferred Stock upon the occurrence of (i) a change of control or (ii) various other triggering events, such as the suspension from trading or delisting of the Company's common stock. If the Series A Redeemable Convertible Preferred Stock is redeemed at the option of the holders, the redemption price may include a make-whole amount or a stated premium, depending on the redemption scenario.

The Company may redeem all, and not less than all, of the Series A Redeemable Convertible Preferred Stock (i) upon a change of control or (ii) during the period of May 15, 2022 through August 15, 2022, provided that the Company has not issued at least \$50.0 million aggregate principal of the Notes, and assuming certain conditions of the common stock have been met. If the Series A Redeemable Convertible Preferred Stock is redeemed at the option of the Company, the redemption price would include a make-whole amount or a 15% premium depending on the circumstances.

If any Series A Redeemable Convertible Preferred Stock remains outstanding on November 15, 2027, the Company shall redeem such Series A Redeemable Convertible Preferred Stock in cash.

In all redemption scenarios, the redemption price for the Series A Redeemable Convertible Preferred Stock includes the stated value plus accrued and unpaid dividends. In addition, depending on the redemption scenario, the redemption price may also include a make-whole amount or stated premium as described above.

When the Company issues Notes, the Holder may exchange the Series A Redeemable Convertible Preferred Stock for (i) Notes and (ii) Series B Warrants to purchase common stock.

The Series A Redeemable Convertible Preferred Stock accrues cumulative dividends quarterly at annual rate of 3.0% on the stated value. Upon consummation of an approved investment (an investment to be identified and approved by each of the Company and Starboard), the dividend rate will increase to 8.0% on the stated value. Upon certain triggering events, the dividend rate will increase to 7.0% if the triggering event occurs before an approved investment or 10.0% on the stated value if the triggering event occurs after an approved investment. The Series A Redeemable Convertible Preferred Stock also participates on an as-converted basis in any regular or special dividends paid to common stockholders. There are no accrued and unpaid dividends as of September 30, 2020.

Holders of the Series A Redeemable Convertible Preferred Stock have the right to vote with common stockholders on an as-converted basis on all matters. Holders of Series A Redeemable Convertible Preferred Stock will also be entitled to a separate class vote with respect to amendments to the Company's organizational documents that generally have an adverse effect on the Series A Redeemable Convertible Preferred Stock.

Upon liquidation of the Company, holders of Series A Redeemable Convertible Preferred Stock have a liquidation preference over holders of our common stock and will be entitled to receive, prior to any distribution to holders of our common stock, an amount equal to the greater of (i) the stated value plus accrued and unpaid dividends or (ii) the amount that would have been received if the Series A Redeemable Convertible Preferred Stock had been converted into common stock immediately prior to the liquidation event at the then effective conversion price.

The Company determined that certain features of the Series A Redeemable Convertible Preferred Stock should be bifurcated and accounted for as a derivative. Each of these features are bundled together as a single, compound embedded derivative.

Total proceeds received and transaction costs incurred from the issuance of the Series A Redeemable Convertible Preferred Stock amounted to \$35 million and \$1.2 million, respectively. Proceeds received were allocated based on the fair value of the instrument without the Series A Warrants and of the Series A Warrants themselves at the time of issuance. The proceeds allocated to the Series A Redeemable Convertible Preferred Stock were then further allocated between the host preferred stock instrument and the embedded derivative, with the embedded derivative recorded at fair value and the Series A Redeemable Convertible Preferred Stock recorded at the residual amount. The portion of the proceeds allocated to the Series A Warrants, embedded derivative, and Series A Redeemable Convertible Preferred Stock was \$4.8 million, \$21.2 million, and \$8.9 million, respectively. Transaction costs were also allocated between the Series A Redeemable Convertible Preferred Stock and the Series A Warrants on the same basis as the proceeds. The transaction costs allocated to the Series A Redeemable Convertible Preferred Stock were treated as a discount to the Series A Redeemable Convertible Preferred Stock. The transaction costs allocated to the Series A Warrants were expensed as incurred.

The Company classifies the Series A Redeemable Convertible Preferred Stock as mezzanine equity as the instrument will become redeemable at the option of the holder in various scenarios or otherwise on November 15, 2027. As it is probable that the Series A Redeemable Convertible Preferred Stock will become redeemable, the Company accretes the instrument to its redemption value using the effective interest method and recognizes any changes against additional paid in capital in the absence of retained earnings. Accretion was \$0.7 million and \$2.0 million, respectively, for the three and nine months ended September 30, 2020.

In connection with the issuance of the Series A Redeemable Convertible Preferred Stock, the Company executed a Registration Rights Agreement with Starboard and the Buyers, and a Governance Agreement with Starboard and certain affiliates of Starboard. Under the Registration Rights Agreement, the Company agreed to provide certain registration rights with respect to the Series A Redeemable Convertible Preferred Stock and shares of Common Stock issued upon conversion. In accordance with the Governance Agreement, the Company agreed to (i) increase the size of the Board of Directors from six to seven members, (ii) appoint a director of the Company, (iii) grant Starboard and its affiliates the right to recommend two additional directors for appointment to the board, (iv) form a Strategic Committee of the Board tasked with sourcing and performing due diligence on potential acquisition targets, (v) appoint certain directors to the Strategic Committee, and (vi) appoint a director to the Nominating and Corporate Governance Committee.

The following features of the Series A Redeemable Convertible Preferred Stock are required to be bifurcated from the host preferred stock and accounted for separately as an embedded derivative: (i) the right of the holders to redeem the shares (put option), (ii) the right of the holders to receive common stock upon conversion of the shares (conversion option), (iii) the right of the Company to redeem the shares (call option), and (iv) the change in dividend rate upon consummation of an approved investment or a triggering event (contingent dividend rate feature).

These features are required to be accounted for separately from the Series A Redeemable Convertible Preferred Stock because the features were determined to be not clearly and closely related to the debt-like host and also did not meet any other scope exceptions for derivative accounting. Therefore, these features are bundled together and are accounted for as a single, compound embedded derivative liability.

Accordingly, we have recorded an embedded derivative liability representing the combined fair value of each of these features. The embedded derivative liability is adjusted to reflect fair value at each period end with changes in fair value recorded in the "Change in fair value of redeemable preferred stock embedded derivative" financial statement line item of the accompanying condensed consolidated statements of operations. As of September 30, 2020, the fair value of the Series A embedded derivative was \$25.7 million.

11. SERIES A WARRANTS

On November 18, 2019, in connection with the issuance of the Series A Redeemable Convertible Preferred Stock, the Company issued detachable Series A Warrants to acquire up to 5,000,000 shares of common stock at a price of \$3.65 per share (subject to certain antidilution adjustments) at any time during a period of eight years beginning on the instrument's issuance date of the Series A Warrants. As of September 30, 2020, the Series A Warrants have not been exercised.

The Series A Warrants will be recognized at fair value at each reporting period until exercised, with changes in fair value recognized in the condensed consolidated statements of operations in other income (expense) in the accompanying condensed consolidated statements of operations. As of December 31, 2019, the fair value of the Series A Warrants was \$3.6 million. As of September 30, 2020, the fair value of the Series A Warrants was \$ 5.6 million.

The Series A Warrants are classified as a liability in accordance with ASC 480, Distinguishing Liabilities from Equity, as the agreement provides for net cash settlement upon a change in control, which is outside the control of the Company.

12. SERIES B WARRANTS

On February 25, 2020, pursuant to the terms of the Securities Purchase Agreement with Starboard and the Buyers, the Company issued Series B Warrants to purchase up to 100 million shares of the Company's common stock at an exercise price (subject to certain price-based anti-dilution adjustments) of either (i) \$5.25 per share, if exercising by cash payment, within 30 months from the issuance date (i.e., August 25, 2022); or (ii) \$3.65 per share, if exercising by cancellation of a portion of Notes. The Company issued the Series B Warrants for an aggregate purchase price of \$4.6 million. The Series B Warrants expire on November 15, 2027.

In connection with the issuance of the Notes on June 4, 2020, the terms of certain of the Series B Warrants were amended to permit the payment of the lower exercise price of \$3.65 through the payment of cash, rather than only through the cancellation of Notes outstanding, at any time until the expiration date of November 15, 2027. Only 31,506,849 of the Series B Warrants are subject to this adjustment with the remaining balance of 68,493,151 Series B Warrants continuing under their original terms. Refer to Note 13 for additional information on the modifications to Series A Redeemable Convertible Preferred Stock and Series B Warrants. As of September 30, 2020, the Series B Warrants have not been exercised.

The Series B Warrants will be recognized at fair value at each reporting period until exercised, with changes in fair value recognized in the condensed consolidated statements of operations in other income (expense). As of September 30, 2020, the fair value of the Series B Warrants was \$42.8 million.

The Series B Warrants are classified as a liability in accordance with ASC 480, Distinguishing Liabilities from Equity, as the agreement provides for net cash settlement upon a change in control, which is outside the control of the Company.

13. SENIOR SECURED NOTES

Pursuant to the Securities Purchase Agreement dated November 18, 2019 with Starboard and the Buyers, on June 4, 2020, the Company issued \$ 115 million in Notes to the Buyers. Also on June 4, 2020, in connection with the issuance of the Notes, the Company entered into a Supplemental Agreement with Starboard (the "Supplemental Agreement"), pursuant to which the Company agreed to redeem \$80 million aggregate principal amount of the Notes by September 30, 2020, and \$35 million aggregate principal amount of the Notes by December 31, 2020, resulting in the total principal outstanding being paid by December 31, 2020. Per the Supplemental Agreement, interest is payable semiannually at a rate of 6.00% per annum, and in an event of default, the interest rate is increased to 10% per annum. The Notes include certain financial and non-financial covenants. Additionally, all or any portion of the principal amount outstanding under the Notes may, at the election of Starboard, be surrendered to the Company for cancellation in payment of the exercise price upon the exercise of Series B Warrants.

On June 30, 2020, the Company entered into an Exchange Agreement (the "Exchange Agreement") with Merton Acquisition HoldCo LLC, a Delaware limited liability company and wholly-owned subsidiary of the Company ("Merton") and Starboard, on behalf of itself and on behalf of certain funds and accounts under its management, including the holders of the Notes. Pursuant to the Exchange Agreement, the holders of the Notes exchanged the entire outstanding principal amount for new senior notes (the "New Notes") issued by Merton having an aggregate outstanding original principal amount of \$115 million.

The New Notes bear interest at a rate of 6.00% per annum and will mature on December 31, 2020. The New Notes are fully guaranteed by the Company and are secured by an all-assets pledge of the Company and Merton and non-recourse equity pledges of each of the Company's material subsidiaries. Pursuant to the Exchange Agreement, the New Notes (i) are deemed to be "Notes" for purposes of the Securities Purchase Agreement, (ii) are deemed to be "June 2020 Approved Investment Notes" for purposes of the Supplemental Agreement, and therefore the Company has agreed to redeem \$80 million principal amount of the New Notes by September 30, 2020 (the "Initial Redemption Date") and \$35 million principal amount of the New Notes by December 31, 2020 (the "Final Redemption Date"), and (iii) are deemed to be "Notes" for the purposes of the Series B Warrants, and therefore may be tendered pursuant to a Note Cancellation under the Series B Warrants on the terms set forth in the Series B Warrants and the New Notes. Delivery of notes in the form of the New Notes will satisfy the delivery of Exchange Notes pursuant to Section 16(i) of the Certificate of Designations of the Company's Series A Convertible Preferred Stock, par value \$0.001 per share. The New Notes will not be deemed to be "Notes" for the purposes of the Registration Rights Agreement, dated as of November 18, 2019, by and among the Company, Starboard and the Buyers.

Because the New Notes will be settled within twelve months pursuant to their terms, they are classified as current liabilities on the balance sheet. The Company capitalized \$4.6 million in lender fees and \$ 0.5 million in other issuance costs associated with the issuance of the Notes. The \$4.6 million of lender fees are recognized as long term deferred debt issuance cost and will be amortized to interest expense until November 15, 2027, the maturity date of Series A Redeemable Convertible Preferred Stock. The \$0.5 million issuance costs are recognized as a discount on the Notes and will be amortized to interest expense over the contractual life of the Notes. There is \$1.7 million accrued and unpaid interest on the New Note as of September 30, 2020.

The Initial Redemption Date was subsequently extended by the parties to November 9, 2020 and the Final Redemption Date was extended to January 15, 2021.

Modifications to Series A Redeemable Convertible Preferred Stock and Series B Warrants

The June 4, 2020 Supplemental Agreement also provided for (i) a waiver of increased dividends under the original terms of the Series A Preferred Stock that would have otherwise accrued due to the Company's use of the \$35 million proceeds received from Starboard and the Buyers upon the issuance of the Series A Redeemable Convertible Preferred Stock in November 2019, (ii) the replacement of original optional redemption rights for the Series A Redeemable Convertible Preferred Stock provided to both the Company and the holders that otherwise would have been nullified through the issuance of the Notes, and (iii) an amendment to the terms of the previously issued Series B Warrants to permit the payment of the lower exercise price of \$3.65 through the payment of cash, rather than only through the cancellation of Notes outstanding, at any time until the expiration of the Series B Warrants on November 15, 2027. Only 31,506,849 of the Series B Warrants are subject to this adjustment with the remaining balance of 68,493,151 Series B Warrants continuing under their original terms.

We analyzed the amendments to the Series A Redeemable Convertible Preferred Stock and determined that the amendments were not significant. Therefore, the amendments are accounted for as a modification on a prospective basis.

The incremental fair value of the Series B Warrants associated with their modification in connection with the issuance of the Notes is \$ 1.3 million and is recognized as a discount on the Notes and will be amortized to interest expense over the contractual life of the Notes. For the three and nine months ended September 30, 2020, respectively, \$532,000 and \$697,000 were amortized to interest expense. As of September 30, 2020, \$ 632,000 is remaining to be amortized until the Final Redemption Date of January 15, 2021.

14. LF EQUITY INCOME FUND PORTFOLIO INVESTMENT

On April 3, 2020, the Company entered into an Option Agreement with Seller, which included general terms through which the Company was provided the option to purchase life sciences equity securities in a portfolio of public and private companies ("Portfolio Companies") for an aggregate purchase price of £223.9 million, approximately \$277.5 million at the exchange rate on April 3, 2020.

On June 4, 2020, the Company executed the Transaction Agreement between Link Fund Solutions Limited, Seller, and the Company. Pursuant to the Transaction Agreement, the Company will purchase from Seller and Seller will transfer to the Company the specified equity securities of all Portfolio Companies at set prices at various future dates. The transfer dates will vary among the Portfolio Companies as the Transaction Agreement gives the Company the exclusive right to determine when to call for transfer of each security, and because each Portfolio Company (or its existing equity holders) may be required to approve the transfer due to rights of first refusals and other company-specific terms and conditions. Thus, the execution of the Transaction Agreement resulted in forward contracts for the Company to purchase equity securities in each public and private company at a specified price on a future date.

In accordance with the Transaction Agreement, the Company transferred the total purchase price of £223.9 million into an escrow account. As each of the equity securities in the Portfolio are transferred to the Company, the associated funds will be released from the escrow account to Seller based on the consideration amount assigned to the equity securities in the Transaction Agreement.

For accounting purposes, the total purchase price of the portfolio was allocated to the individual equity securities based on their individual fair values as of April 3, 2020, in order to establish an appropriate cost basis for each of the acquired securities. The fair values of the public company securities were based on their quoted market price. The fair values of the private company securities were estimated based on recent financing transactions and secondary market transactions and factoring in a discount for the illiquidity of these securities.

During the three months ended September 30, 2020, Seller returned a total of £ 4.5 million of the Company's prepaid investment upon the failure to obtain the approval of the existing equity holders, pursuant to their rights of first refusals, of one of the Portfolio Companies in connection with the transfer of its securities. In addition, due to an ownership restriction applicable to one of the Portfolio Companies, the Company sold a small portion of an equity securities derivative for £33,000 before the remaining shares of such Portfolio Company could be transferred to us. The Company recognized a net gain of \$ 2.8 million related to the returned prepaid investments and sale of the derivative.

Changes in the fair value of Acacia's investment in the Portfolio Companies are recorded as unrealized gains or losses in the condensed consolidated statements of operations. For the three and nine months ended September 30, 2020 and 2019, the accompanying condensed consolidated statements of operations reflected the following:

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2020	2019	2020	2019
	(In thousands)			
Change in fair value of trading securities - LF Fund public securities	\$ 3,403	\$ -	\$ 2,334	\$ -
Change in fair value of equity securities derivative	10,651	-	17,542	-
Change in fair value of equity securities - LF Fund private securities	80,896	-	80,896	-
Change in fair value of equity securities forward contract	(74,662)	-	-	-
Gain (loss) on sale of trading securities - LF Fund public securities	1,908	-	(4,202)	-
Gain on sale of prepaid investment and derivative	2,845	-	2,845	-
Net realized and unrealized gain on investment in LF Fund securities	<u>\$ 25,041</u>	<u>\$ -</u>	<u>\$ 99,415</u>	<u>\$ -</u>

15. SUBSEQUENT EVENTS

None.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operation

The following discussion and analysis of our financial condition and results of operations should be read together with our unaudited condensed consolidated financial statements and the related notes included in Part I, Item 1 of this Quarterly Report on Form 10-Q for the three months ended September 30, 2020, or this Report. This discussion and analysis contains forward-looking statements that are based on our current expectations and reflect our plans, estimates and anticipated future financial performance. See the section of this Report entitled "Cautionary Statement Regarding Forward-Looking Statements" for additional information. These statements involve numerous risks and uncertainties. Our actual results may differ materially from those expressed or implied by these forward-looking statements as a result of many factors, including those set forth in "Risk Factors" in Part II, Item 1A of this Report.

General

As used in this Quarterly Report on Form 10-Q, "we" "us" "our" and "Company" refer to Acacia Research Corporation, a Delaware corporation, and/or its wholly and majority-owned and controlled operating subsidiaries, and/or where applicable, its management. All IP acquisition, development, licensing and enforcement activities are conducted solely by certain of Acacia Research Corporation's wholly and majority-owned and controlled operating subsidiaries.

We invest in IP and related absolute return assets and engage in the licensing and enforcement of patented technologies. We partner with inventors and patent owners, applying our legal and technology expertise to patent assets to unlock the financial value in their patented inventions. We generate revenues and related cash flows from the granting of patent rights for the use of patented technologies that our operating subsidiaries control or own. We assist patent owners with the prosecution and development of their patent portfolios, the protection of their patented inventions from unauthorized use, the generation of licensing revenue from users of their patented technologies and, where necessary, with the enforcement against unauthorized users of their patented technologies through the filing of patent infringement litigation. We are principals in the licensing and enforcement effort, obtaining control of the rights in the patent portfolio, or control of the patent portfolio outright.

We have a proven track record of licensing and enforcement success with over 1,580 license agreements executed to date, across nearly 200 patent portfolio licensing and enforcement programs. Currently, on a consolidated basis, our operating subsidiaries own or control the rights to multiple patent portfolios, which include U.S. patents and certain foreign counterparts, covering technologies used in a variety of industries. To date, we have generated gross licensing revenue of approximately \$1.6 billion, and have returned more than \$796 million to our patent partners.

Our team's expertise in identifying and evaluating complex IP, and in developing and cultivating long-term business relationships, provides us a unique window into innovation and technological advancement. We are increasing our efforts to leverage our expertise and experience to create new avenues and monetize our existing IP assets, which we believe will lead to increased stockholder value. We intend to leverage our experience, expertise, data and relationships developed as a leader in the IP industry to pursue these opportunities.

Executive Summary

Overview

Our operating activities during the periods presented were focused on the continued operation of our patent licensing and enforcement business, including the continued pursuit of our ongoing patent licensing and enforcement programs.

- *Patent Litigation Trial Dates and Related Trials*

As of the date of this report, our operating subsidiaries have one pending patent infringement case with a scheduled trial date in the next twelve months. Patent infringement trials are components of our overall patent licensing process and are one of many factors that contribute to possible future revenue generating opportunities for us. Scheduled trial dates, as promulgated by the respective court, merely provide an indication of when, in future periods, the trials may occur according to the court's scheduling calendar at a specific point in time. A court may change previously scheduled trial dates. In fact, courts often reschedule trial dates for various reasons that are unrelated to the underlying patent assets and typically for reasons that are beyond our control. While scheduled trial dates provide an indication of the timing of possible future revenue generating opportunities for us, the trials themselves and the immediately preceding periods represent the possible future revenue generating opportunities. These future opportunities can result in varying outcomes. In fact, it is difficult to predict the outcome of patent enforcement litigation at the trial level and outcomes can be unfavorable. It can be difficult to understand complex patented technologies, and as a result, this may lead to a higher rate of unfavorable litigation outcomes. Moreover, in the event of a favorable outcome, there is, in our experience, a higher rate of successful appeals in patent enforcement litigation than more standard business litigation. Such appeals are expensive and time consuming, resulting in increased costs and a potential for delayed or foregone revenue opportunities in the event of modification or reversal of favorable outcomes. Although we diligently pursue enforcement litigation, we cannot predict with reliability the decisions made by juries and trial courts. Please refer to Item 1A. "Risk Factors" for additional information regarding trials, patent litigation and related risks.

- *Litigation and Licensing Expense*

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

- Increases in patent-related legal expenses associated with patent infringement litigation, including, but not limited to, increases in costs billed by outside legal counsel for discovery, depositions, economic analyses, damages assessments, expert witnesses and other consultants, re-exam and inter partes review costs, case-related audio/video presentations and other litigation support and administrative costs, could increase our operating costs and decrease our profit generating opportunities;
- Our patented technologies and enforcement actions are complex and, as a result, we may be required to appeal adverse decisions by trial courts in order to successfully enforce our patents. Moreover, such appeals may not be successful;
- New legislation, regulations or rules related to enforcement actions, including any fee or cost shifting provisions, could significantly increase our operating costs and decrease our profit generating opportunities. Increased focus on the growing number of patent-related lawsuits may result in legislative changes which increase our costs and related risks of asserting patent enforcement actions;
- Courts may rule that our subsidiaries have violated certain statutory, regulatory, federal, local or governing rules or standards by pursuing such enforcement actions, which may expose us and our operating subsidiaries to material liabilities, which could harm our operating results and our financial position;
- The complexity of negotiations and potential magnitude of exposure for potential infringers associated with higher quality patent portfolios may lead to increased intervals of time between the filing of litigation and potential revenue events (i.e., markman dates, trial dates), which may lead to increased legal expenses, consistent with the higher revenue potential of such portfolios; and
- Fluctuations in overall patent portfolio related enforcement activities which are impacted by the portfolio intake challenges discussed above could harm our operating results and our financial position.

Investments in Patent Portfolios

With respect to our licensing, enforcement and overall business, neither we nor our operating subsidiaries invent new technologies or products; rather, we depend upon the identification and investment in patents, inventions and companies that own IP through our relationships with inventors, universities, research institutions, technology companies and others. If our operating subsidiaries are unable to maintain those relationships and identify and grow new relationships, then we may not be able to identify new technology-based patent opportunities for sustainable revenue and /or revenue growth.

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

Patent Portfolio Intake

One of the significant challenges in our industry continues to be quality patent intake due to the challenges and complexity associated with the current patent environment.

During the nine months ended September 30, 2020, we acquired four new patent portfolios consisting of (i) flash memory technology, (ii) voice activation and control technology, (iii) wireless networks, and (iv) internet search, advertising and cloud computing technology. The patents and patent rights acquired in 2020 have estimated economic useful lives of approximately five years. In fiscal year 2019, we acquired five patent portfolios.

Starboard Securities

In 2019, as part of its strategy to grow, the Company began evaluating a wide range of strategic opportunities that culminated in the strategic investment in the Company by certain funds and accounts, or the Buyers, affiliated with, or managed by, Starboard Value LP, or Starboard. On November 18, 2019, the Company entered into a Securities Purchase Agreement with Starboard and the Buyers, or the Securities Purchase Agreement, pursuant to which the Buyers purchased (i) 350,000 shares of the Company's newly designated Series A Convertible Preferred Stock, or Series A Preferred Stock, at an aggregate purchase price of \$35,000,000, and warrants to purchase up to 5,000,000 shares of the Company's common stock, or Series A Warrants. The Securities Purchase Agreements also established the terms of certain senior secured notes, or Notes, and additional warrants, or the Series B Warrants, which may be issued to the Buyers in the future. Refer to Notes 2, 10, 11 and 12 to the condensed consolidated financial statements elsewhere herein for more information related to the Series A Preferred Stock, Series A Warrants and Series B Warrants. In connection with the Buyers' investment, Starboard was granted certain corporate governance rights, including the right to appoint Jonathan Sagal, Managing Director of Starboard, as a director of the Company and recommend two additional directors for appointment to our Board of Directors. The investment by the Buyers is referred to herein as the "Starboard Investment," and the Series A Preferred Stock, Series A Warrants and Series B Warrants are referred to herein as, collectively, the "Starboard Securities."

On February 14, 2020, the Company's stockholders approved, for purposes of Nasdaq Rules 5635(b) and 5635(d), as applicable, (i) the voting of the Series A Preferred Stock on an as-converted basis and (ii) the issuance of the maximum number of shares of common stock issuable in connection with the potential future (A) conversion of the Series A Preferred Stock and (B) exercise of the Series A and Series B Warrants, in each case, without giving effect to the exchange cap set forth in the Series A Preferred Stock Certificate of Designations and in the Series A Warrants, issued pursuant to the Securities Purchase Agreement dated November 18, 2019. Refer to Notes 10 and 11 to the condensed consolidated financial statements elsewhere herein for additional information. The Company's stockholders also approved an amendment to the Company's Amended and Restated Certificate of Incorporation to increase the total number of authorized shares of common stock by 200,000,000 shares, from 100,000,000 shares to 300,000,000 shares.

On February 25, 2020, pursuant to the terms of the Securities Purchase Agreement with Starboard and the Buyers, the Company issued Series B Warrants to purchase up to 100 million shares of the Company's common stock at an exercise price of either (i) \$5.25 per share, if exercising by cash payment, or (ii) \$3.65 per share, if exercising by cancellation of a portion of Notes. The Company issued the Series B Warrants for an aggregate purchase price of \$4.6 million. Refer to Note 12 to the condensed consolidated financial statements elsewhere herein for additional information.

Pursuant to the terms of the Securities Purchase Agreement with Starboard and the Buyers, on June 4, 2020, the Company issued \$115 million in Notes to the Buyers. Also on June 4, 2020, in connection with the issuance of the Notes, the Company entered into a Supplemental Agreement with Starboard, or the Supplemental Agreement, through which, the Company agreed to redeem \$80 million aggregate principal amount of the Notes by September 30, 2020, and \$35 million aggregate principal amount of the Notes by December 31, 2020, resulting in the total principal outstanding being paid by December 31, 2020. Per the Supplemental Agreement, interest is payable semiannually at a rate of 6.00% per annum, and in an event of default, the interest rate is increased to 10% per annum. The Notes outlined certain financial and non-financial covenants. Additionally, all or any portion of the principal amount outstanding under the Notes may, at the election of the holders, be surrendered to the Company for cancellation in payment of the exercise price upon the exercise of the Series B Warrants.

On June 30, 2020, the Company entered into an Exchange Agreement, or the Exchange Agreement, with Merton Acquisition HoldCo LLC, a Delaware limited liability company and wholly-owned subsidiary of the Company, or Merton and Starboard, on behalf of itself and on behalf of the Buyers, including the holders of the Notes. Pursuant to the Exchange Agreement, the holders of the Notes exchanged the entire outstanding principal amount for new senior notes, or the Notes, issued by Merton having an aggregate outstanding original principal amount of \$115 million. The New Notes bear interest at a rate of 6.00% per annum and will mature December 31, 2020. The New Notes are fully guaranteed by the Company and are secured by an all-assets pledge of the Company and Merton and non-recourse equity pledges of each of the Company's material subsidiaries. Pursuant to the Exchange Agreement, the New Notes (i) are deemed to be "Notes" for purposes of the Securities Purchase Agreement, (ii) are deemed to be "June 2020 Approved Investment Notes" for purposes of the Supplemental Agreement, and therefore the Company has agreed to redeem \$80 million principal amount of the New Notes by September 30, 2020, or the Initial Redemption Date, and \$35 million principal amount of the New Notes by December 31, 2020, or the Final Redemption Date, and (iii) are deemed to be "Notes" for the purposes of the Series B Warrants, and therefore may be tendered pursuant to a Note Cancellation under the Series B Warrants on the terms set forth in the Series B Warrants and the New Notes. Delivery of notes in the form of the New Notes will satisfy the delivery of Exchange Notes pursuant to Section 16(i) of the Certificate of Designations of the Company's Series A Convertible Preferred Stock, par value \$0.001 per share. The New Notes will not be deemed to be "Notes" for the purposes of the Registration Rights Agreement, dated as of November 18, 2019, by and between the Company, Starboard and the Buyers. The Initial Redemption Date was subsequently extended by the parties to November 9, 2020 and the Final Redemption Date was extended to January 15, 2021. Refer to Note 13 to the condensed consolidated financial statements elsewhere herein for additional information.

LF Equity Income Fund Portfolio Investment

On April 3, 2020, the Company entered into an Option Agreement with LF Equity Income Fund, or Seller, to purchase equity securities in a portfolio of public and private companies, or Portfolio Companies, for an aggregate purchase price of £223.9 million, approximately \$277.5 million at the exchange rate on April 3, 2020.

On June 4, 2020, the Company executed the Transaction Agreement between Link Fund Solutions Limited, or Link, Seller, and the Company. Pursuant to the Transaction Agreement, the Company will purchase from Seller and Seller will transfer to the Company the specified equity securities of all Portfolio Companies at set prices at various future dates. In accordance with the Transaction Agreement, the Company transferred the total purchase price of £223.9 million into an escrow account. As each of the equity securities in the Portfolio are transferred to the Company, the associated funds will be released from the escrow account to Seller based on the consideration amount assigned to the equity securities in the Transaction Agreement.

The Transaction Agreement includes an initial consideration amount for each of the equity securities as noted above, which represents the amount of cash that will be withdrawn from the escrow account upon the transfer of each security to the Company. Refer to Note 14 to the condensed consolidated financial statements elsewhere herein for additional information.

Operating Activities

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

- the dollar amount of agreements executed each period, which can be driven by the nature and characteristics of the technology or technologies being licensed and the magnitude of infringement associated with a specific licensee;
- the specific terms and conditions of agreements executed each period including the nature and characteristics of rights granted, and the periods of infringement or term of use contemplated by the respective payments;
- fluctuations in the total number of agreements executed each period;
- the number of, timing, results and uncertainties associated with patent licensing negotiations, mediations, patent infringement actions, trial dates and other enforcement proceedings relating to our patent licensing and enforcement programs;
- the relative maturity of licensing programs during the applicable periods;
- other external factors, including the periodic status or results of ongoing negotiations, the status or results of ongoing litigations and appeals, actual or perceived shifts in the regulatory environment, impact of unrelated patent related judicial proceedings and other macroeconomic factors;
- the willingness of prospective licensees to settle significant patent infringement cases and pay reasonable license fees for the use of our patented technology, as such infringement cases approached a court determined trial date; and
- fluctuations in overall patent portfolio related enforcement activities which are impacted by the portfolio intake challenges discussed above.

Our management does not attempt to manage for smooth sequential periodic growth in revenues from period to period, and therefore, periodic results can be uneven. Unlike most operating businesses and industries, licensing revenues not generated in a current period are not necessarily foregone but, depending on whether negotiations, litigation or both continue into subsequent periods, and depending on a number of other factors, such potential revenues may be pushed into subsequent fiscal periods.

Revenues for the nine months ended September 30, 2020 and 2019 included fees from the following technology licensing and enforcement programs:

- Bone Wedge technology⁽¹⁾⁽²⁾
- Internet search, advertising and cloud computing technology⁽¹⁾
- Internet radio ad placement⁽¹⁾
- MIPI DSI technology⁽¹⁾
- Semiconductor and Memory-Related technology⁽¹⁾
- Speech codecs used in wireless and wireline systems technology⁽¹⁾⁽²⁾
- Super Resolutions Microscopy technology⁽¹⁾⁽²⁾
- Video Conferencing technology⁽¹⁾⁽²⁾

⁽¹⁾ Licensing and enforcement program generating revenue during the nine months ended September 30, 2020.

⁽²⁾ Licensing and enforcement program generating revenue during the nine months ended September 30, 2019.

Summary of Consolidated Results of Operations - Overview

For the Three months Ended September 30, 2020 and 2019

	Three Months Ended September 30,				Nine Months Ended September 30,			
	2020	2019	\$ Change	% Change	2020	2019	\$ Change	% Change
	(In thousands, except percentage change values)							
Revenues	\$ 19,466	\$ 1,711	\$ 17,755	1,038%	\$ 25,399	\$ 10,558	\$ 14,841	141%
Operating costs and expenses	22,248	6,816	15,432	226%	38,498	26,542	11,956	45%
Operating loss	(2,782)	(5,105)	2,323	(46%)	(13,099)	(15,984)	2,885	(18%)
Other income (expense), net	41,213	(2,503)	43,716	1,747%	45,047	(1,456)	46,503	3,194%
Income (loss) before provision for income taxes	38,431	(7,608)	46,039	605%	31,948	(17,440)	49,388	283%
Provision for income taxes	(83)	—	(83)	n/a	1,257	(323)	1,580	(489%)
Net income (loss) attributable to Acacia Research Corporation	38,348	(7,608)	45,956	604%	33,205	(17,749)	50,954	287%

Results of Operations - Three months ended September 30, 2020 compared with the three months ended September 30, 2019

Revenues increased \$17.8 million to \$19.5 million for the three months ended September 30, 2020, as compared to \$1.7 million in the comparable prior year quarter, primarily due to an increase in revenues from the new agreements executed during the quarter. Refer to "Investments in Patent Portfolios" above for additional information regarding the impact of portfolio acquisition trends on current and future licensing and enforcement related revenues.

Income before provision for income taxes was \$38.4 million for the three months ended September 30, 2020, as compared to a loss of \$7.6 million for the three months ended September 30, 2019. The net change was comprised of the change in revenues described above and other changes in operating expenses and other income and expenses as follows:

- Paid-up revenue increased \$18.2 million due to increase in revenue from newly executed licensing agreements during the quarter, offset by decrease of \$0.4 million in recurring revenue that provides for quarterly sales-based license fees. Refer to Note 2 to the condensed consolidated financial statements elsewhere herein for additional information regarding certain sales-based revenue contracts that provide for the payment of quarterly license fees based on quarterly sales of applicable product units by licensees.
- Inventor royalties and contingent legal fees, on a combined basis, increased \$11.6 million, from \$0.8 million to \$12.4 million, primarily due to increase in revenues as describe above.
- Litigation and licensing expenses - patents increased \$14,000, from \$1,001,000 to \$987,000, primarily due to a net increase in litigation support and third-party technical consulting expenses associated with ongoing litigation.
- Amortization expense increased \$0.3 million, from \$0.9 million to \$1.2 million, due to an increase in scheduled amortization resulting from the new portfolios acquired in 2019 and 2020.
- Other portfolio income decreased \$0.5 million, due to reversal of expenses for settlement and contingency accruals recorded in the comparable prior year quarter.
- General and administrative expenses, excluding non-cash stock compensation, increased \$2.9 million, from \$4.3 million to \$7.2 million, primarily due to higher corporate, general and administrative costs related to legal and other business development expenses, including \$1.6 million in legal and advisory fees related to our LF Equity Income Fund Portfolio Investment.
- Net non-cash stock compensation expense increased \$0.2 million, from \$0.3 million to \$0.5 million, primarily due to stock grants issued to employees and the Board of Directors in 2019 and 2020.
- Unrealized loss on our equity investment in Veritone, Inc., or Veritone, decreased from an unrealized loss of \$4.3 million for the three months ended September 30, 2019 to an unrealized loss of \$3.1 million for the three months ended September 30, 2020. There was no realized gain or loss on our equity investment in Veritone for the three months ended September 30, 2020, as compared to a realized loss of \$0.9 million for the three months ended September 30, 2019. Refer to Note 5 to the condensed consolidated financial statements elsewhere herein for additional information regarding our investment in Veritone.
- Unrealized gain or loss from trading securities and other equity securities increased from an unrealized loss of \$0.5 million for the three months ended September 30, 2019 to an unrealized gain of \$20.5 million for the three months ended September 30, 2020. Refer to Notes 2 and 14 to the condensed consolidated financial statements elsewhere herein for additional information.
- Realized gain from sale of our trading securities increased from a gain of \$0.2 million for the three months ended September 30, 2019 to a gain of \$2.7 million for the three months ended September 30, 2020. We also recognized a net gain of \$2.8 million related to returned prepaid investments and the sale of an equity security derivative. Refer to Notes 2 and 14 to the condensed consolidated financial statements elsewhere herein for additional information regarding our investment in trading securities and LF Equity Income Fund Portfolio Investment .

- Interest income and other decreased \$1.0 million from a net income of \$1.0 million for the three months ended September 30, 2019 to a net income of \$10,000 for the three months ended September 30, 2020, mainly due to decrease in interest income from our investment in trading securities. Refer to Note 2 to the condensed consolidated financial statements elsewhere herein for additional information regarding our investment in trading securities.
- We incurred interest expense of \$2.4 million during the quarter from the Notes issued in June 2020. Refer to Note 13 to the condensed consolidated financial statements elsewhere herein for additional information regarding the Notes.
- Loss on foreign currency exchange decreased \$58,000 from a loss of \$106,000 for the three months ended September 30, 2019 to a loss of \$48,000 for the three months ended September 30, 2020.
- We incurred an unrealized net gain of \$20.7 million from the fair value measurements of the Series A and Series B warrants and the embedded derivative for the three months ended September 30, 2020. Refer to Notes 10, 11 and 12 to the condensed consolidated financial statements elsewhere herein for additional information regarding the Starboard Securities.

Results of Operations - Nine months ended September 30, 2020 compared with the nine months ended September 30, 2019

Revenues increased \$14.8 million to \$25.4 million for the nine months ended September 30, 2020, as compared to \$10.6 million in the comparable prior year period, primarily due to increase in revenues from the new agreements executed during the current year period. Refer to "Investments in Patent Portfolios" above for additional information regarding the impact of portfolio acquisition trends on current and future licensing and enforcement related revenues.

Income before provision for income taxes was \$31.9 million for the nine months ended September 30, 2020, as compared to a loss of \$17.4 million for the nine months ended September 30, 2019. The net change was comprised of the change in revenues described above and other changes in operating expenses and other income and expenses as follows:

- Paid-up revenue increased \$18.4 million due to increase in newly executed licensing, offset by a decrease of \$3.6 million in recurring revenue due to a decrease in revenue provided by quarterly sales-based license fees agreements, during the nine months ended September 30, 2020 as compared to the nine months ended September 30, 2019. Refer to Note 2 to the condensed consolidated financial statements elsewhere herein for additional information regarding certain sales-based revenue contracts that provide for the payment of quarterly license fees based on quarterly sales of applicable product units by licensees.
- Inventor royalties and contingent legal fees, on a combined basis, increased \$8.4 million, from \$5.3 million to \$13.7 million, primarily due to increase in revenues as describe above.
- Litigation and licensing expenses - patents decreased \$3.1 million, from \$6.6 million to \$3.5 million, due primarily to a net decrease in litigation support and third-party technical consulting expenses associated with ongoing litigation.
- Amortization expense increased \$1.2 million, from \$2.3 million to \$3.5 million, due to an increase in scheduled amortization resulting from the new portfolios acquired in 2019 and 2020.
- Other portfolio expenses decreased \$0.5 million, from an expense of \$0.2 million to an income of \$0.3 million, primarily due to reversal of expenses for settlement and contingency accruals recorded in the third quarter of 2018.
- General and administrative expenses, excluding non-cash stock compensation, increased \$5.5 million, from \$11.3 million to \$16.8 million, primarily due to higher corporate, general and administrative costs related to legal and other business development expenses, including \$1.9 million in legal and advisory fees related to our LF Equity Income Fund Portfolio Investment.
- Net non-cash stock compensation expense increased \$0.4 million, from \$0.8 million to \$1.2 million, primarily due to stock grants issued to employees and the Board of Directors in 2019 and 2020.

- Unrealized gain or loss on our equity investment in Veritone, decreased from an unrealized gain of \$9.6 million for the nine months ended September 30, 2019 to an unrealized gain of \$3.7 million for the nine months ended September 30, 2020. Realized loss on our equity investment in Veritone decreased from a loss of \$8.1 million for the nine months ended September 30, 2019 to a loss of \$2.8 million for the nine months ended September 30, 2020. Refer to Note 5 to the condensed consolidated financial statements elsewhere herein for additional information regarding our investment in Veritone.
- Unrealized gain or loss from trading securities and other equity securities increased from an unrealized gain of \$0.1 million for the nine months ended September 30, 2019 to an unrealized gain of \$99.4 million for the nine months ended September 30, 2020.
- Realized loss from sale of our trading securities increased \$4.5 million from a gain of \$0.2 million for the nine months ended September 30, 2019 to a loss of \$4.3 million for the nine months ended September 30, 2020. We also recognized a net gain of \$2.8 million related to returned prepaid investments and the sale of an equity security derivative. Refer to Notes 2 and 14 to the condensed consolidated financial statements elsewhere herein for additional information regarding our investment in trading securities and LF Equity Income Fund Portfolio Investment .
- Interest income and other decreased \$2.2 million, from a net income of \$3.0 million for the nine months ended September 30, 2019 to a net income of \$0.8 million for the nine months ended September 30, 2020, mainly due to decrease in interest income from our investment in trading securities. Refer to Note 2 to the condensed consolidated financial statements elsewhere herein for additional information regarding our investment in trading securities
- We incurred interest expense of \$3.2 million for the nine months ended September 30, 2020 from the Notes issued in June 2020. Refer to Note 13 to the condensed consolidated financial statements elsewhere herein for additional information regarding the Notes.
- Loss on foreign currency exchange increased \$4.8 million from a loss of \$0.1 million for the nine months ended September 30, 2019 to a loss of \$4.9 million for the nine months ended September 30, 2020, primarily from our transaction related to the LF Income Equity Fund securities. Refer to Note 14 to the condensed consolidated financial statements elsewhere herein for additional information.
- We incurred an unrealized net loss of \$46.6 million from the fair value measurements of the Series A and Series B warrants and the embedded derivative for the nine months ended September 30, 2020. Refer to Notes 10, 11, 12 and 13 to the condensed consolidated financial statements elsewhere herein for additional information regarding the Starboard Securities.

Revenues and Pretax Net Loss

Revenue for the periods presented included the following:

	Three Months Ended		Change		Nine Months Ended		Change	
	September 30,				September 30,			
	2020	2019	\$	%	2020	2019	\$	%
Revenues (in thousands, except percentage change values)	\$ 19,466	\$ 1,711	\$ 17,755	1,038%	\$ 25,399	\$ 10,558	\$ 14,841	141%
New agreements executed	3	3	–	0%	11	4	7	175%
Licensing and enforcement programs generating revenues	5	4	1	25%	8	4	4	100%
Licensing and enforcement programs with initial revenues	1	–	1	n/a	2	–	2	n/a
New patent portfolios	–	2	(2)	(100%)	4	5	(1)	(20%)

For the periods presented herein, the majority of the revenue agreements executed provided for the payment of one-time, paid-up license fees in consideration for the grant of certain IP Rights for patented technology rights owned by our operating subsidiaries. These rights were primarily granted on a perpetual basis, extending until the expiration of the underlying patents.

Refer to Note 2 to the condensed consolidated financial statements elsewhere herein for additional information regarding our revenue concentrations for the periods presented herein.

Refer to "Investments in Patent Portfolios" above for information regarding the impact of portfolio acquisition trends on current and future licensing and enforcement related revenues.

	Three Months Ended		Change		Nine Months Ended		Change	
	September 30,				September 30,			
	2020	2019	\$	%	2020	2019	\$	%
(In thousands, except percentage change values)								

Income (loss) before provision for income taxes	\$	38,431	\$	(7,608)	\$	46,039	605%	\$	31,948	\$	(17,440)	\$	49,388	283%
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Cost of Revenues

Inventor Royalties, Contingent Legal Fees Expense and Other

Inventor royalties and contingent legal fee expenses fluctuate from period to period based on the amount of revenues recognized each period, the terms and conditions of agreements executed each period and the mix of specific patent portfolios, with varying economic terms and obligations, generating revenues each period.

	Three Months Ended		Change		Nine Months Ended		Change	
	September 30,				September 30,			
	2020	2019	\$	%	2020	2019	\$	%
(In thousands, except percentage change values)								

Inventor royalties	\$	5,772	\$	776	\$	4,996	644%	\$	6,843	\$	4,752	\$	2,091	44%
Contingent legal fees		6,609		35		6,574	18,783%		6,855		587		6,268	1,068%

Litigation and Licensing Expenses - Patents

For the three months ended September 30, 2020, litigation and licensing expenses-patents increased \$14,000, or 1%. For the nine months ended September 30, 2020, litigation and licensing expenses-patents decreased \$3.1 million, or 47%. The decrease for the nine months period was due to a net decrease in litigation support and third-party technical consulting expenses, as compared to the same nine months period in the prior year.

Amortization of Patents

For the three months ended September 30, 2020, amortization expense increased \$0.3 million, or 36%, as compared to the three months ended September 30, 2019. For the nine months ended September 30, 2020, amortization expense increased \$1.2 million, or 51%, as compared to the nine months ended September 30, 2019. These increases were due to our new patents acquired in 2019 and 2020.

	Three Months Ended		Change		Nine Months Ended		Change	
	September 30,				September 30,			
	2020	2019	\$	%	2020	2019	\$	%
(In thousands, except percentage change values)								

Litigation and licensing expenses - patents	\$	1,001	\$	987	\$	14	1%	\$	3,497	\$	6,643	\$	(3,146)	(47%)
Amortization of patents		1,174		863		311	36%		3,522		2,337		1,185	51%

Operating Expenses

General and Administrative Expenses

	Three Months Ended		Change		Nine Months Ended		Change	
	September 30,				September 30,			
	2020	2019	\$	%	2020	2019	\$	%
(In thousands, except percentage change values)								
General and administrative expenses	\$ 7,204	\$ 4,330	\$ 2,874	66%	\$ 16,846	\$ 11,295	\$ 5,551	49%
Non-cash stock compensation expense								
- G&A	488	300	188	63%	1,243	753	490	65%
Total general and administrative expenses	\$ 7,692	\$ 4,630	\$ 3,062	66%	\$ 18,089	\$ 12,048	\$ 6,041	50%

A summary of the main drivers of the change in general and administrative expenses for the periods presented, is as follows:

	Three Months Ended	Nine Months Ended
	September 30,	September 30,
	2020 vs. 2019	2020 vs. 2019
(In thousands)		
Personnel costs and board fees	\$ (429)	\$ (556)
Variable performance-based compensation costs	65	1,440
Corporate, general and administrative costs	3,239	4,798
Non-cash stock compensation expense	188	490
Non-recurring employee severance costs	(1)	(131)
Total change in general and administrative expenses	\$ 3,062	\$ 6,041

The increases in corporate, general and administrative costs were primarily due to higher legal and business development related expenses, including legal and advisory fees related to our LF Equity Income Fund Portfolio Investment. The increase in variance performance-based compensation costs were primarily due to higher performance-based compensation accruals. The changes in non-cash stock compensation expense were primarily due to stock grants issued to employees and the Board of Directors in the quarters ended June 30, 2019, September 30, 2019, and June 30, 2020.

Other Operating Income (Expense)

Change in Fair Value of Investment, net

Acacia's investment in Veritone is recorded at fair value, and marked to market at each balance sheet date, with changes in fair value, primarily based on changes in Veritone's stock price, reflected in the statements of operations each period. Results for the three and nine months ended September 30, 2020 included an unrealized loss totaling \$3.1 million and an unrealized gain totaling \$3.7 million, respectively, on our investment in Veritone. Results for the three and nine months ended September 30, 2019 included unrealized losses totaling \$4.3 million and unrealized gain totaling \$9.6 million, respectively, on our investment in Veritone. Refer to Note 5 to the condensed consolidated financial statements elsewhere herein for additional information regarding our investment in Veritone.

Income Taxes

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2020	2019	2020	2019
Income taxes (in thousands)	\$ (83)	\$ —	\$ 1,257	\$ (323)
Effective tax rate	0%	0%	(4%)	(2%)

Tax expense for the periods presented primarily reflects the impact of state taxes and foreign taxes withholding or refund incurred on revenue agreements executed with third-party licensees domiciled in foreign jurisdictions.

Liquidity and Capital Resources

General

Our primary sources of liquidity are cash and cash equivalents on hand generated from our operating activities. Our management believes that our cash and cash equivalent balances and anticipated cash flows from operations will be sufficient to meet our cash requirements through at least twelve months from the date of this report and for the foreseeable future. We may, however, encounter unforeseen difficulties that may deplete our capital resources more rapidly than anticipated, including those set forth under Part II, Item 1A, "Risk Factors". Any efforts to seek additional funding could be made through issuances of equity or debt, or other external financing. However, additional funding may not be available to us on favorable terms, or at all. The capital and credit markets have experienced extreme volatility and disruption in recent years, and the volatility and impact of the disruption may continue. At times during this period, the volatility and disruption has reached unprecedented levels. In several cases, the markets have exerted downward pressure on stock prices and credit capacity for certain issuers, and the commercial paper markets may not be a reliable source of short-term financing for us. If we fail to obtain additional financing when needed, we may not be able to execute our business plans and our business, conducted by our operating subsidiaries, may suffer.

Certain of our operating subsidiaries are often required to engage in litigation to enforce their patents and patent rights. In connection with any of our operating subsidiaries' patent enforcement actions, it is possible that a defendant may request and/or a court may rule that an operating subsidiary has violated statutory authority, regulatory authority, federal rules, local court rules, or governing standards relating to the substantive or procedural aspects of such enforcement actions. In such event, a court may issue monetary sanctions against us or our operating subsidiaries or award attorney's fees and/or expenses to a defendant(s), which could be material.

Cash, Cash Equivalents and Investments

Our consolidated cash, cash equivalents, trading securities, and restricted cash totaled \$222.0 million at September 30, 2020, compared to \$203.3 million at December 31, 2019.

The net change in cash, cash equivalents and restricted cash for the periods presented was comprised of the following:

	Nine Months Ended	
	September 30,	
	2020	2019
	(In thousands)	
Net cash provided by (used in):		
Operating activities	\$ 5,549	\$ (846)
Investing activities	(9,815)	(61,181)
Financing activities	109,471	79
Increases (decrease) in cash and cash equivalents and restricted cash	\$ 105,205	\$ (61,948)

Cash Flows from Operating Activities

Cash receipts from licensees for the nine months ended September 30, 2020 decreased \$16.5 million to \$25.6 million, as compared to \$42.1 million in the comparable 2019 period, mainly due to the timing on cash collected from accounts receivables in prior year.

Cash inflows from operations for the nine months ended September 30, 2020 increased \$6.3 million to \$5.5 million, as compared to a net outflow of \$0.8 million in the comparable 2019 period, primarily due to cash receipts from revenue during the nine months in the current year period, and higher royalty and contingent legal fees paid in the same period last year. Refer to "Working Capital" below for additional information.

Cash Flows from Investing Activities

Cash flows from investing activities and related changes were comprised of the following for the periods presented:

	September 30,	
	2020	2019
	(In thousands)	
Patent acquisition costs	\$ (13,780)	\$ (4,420)
Sale of investment at fair value ⁽¹⁾	1,460	6,260
(Purchase) Sale of other investments ⁽¹⁾	–	2,000
Net sale (purchase) of trading securities	282,946	(64,902)
Purchases of prepaid investment	(276,275)	–
Equity securities derivative and forward contract acquisition cost	(3,989)	–
Purchases of property and equipment	(177)	(119)
Net cash used in investing activities	<u>\$ (9,815)</u>	<u>\$ (61,181)</u>

⁽¹⁾ Refer to Note 5 to the condensed consolidated financial statements elsewhere herein for additional information

Cash Flows from Financing Activities

Cash flows from financing activities and related changes were comprised of the following for the periods presented:

	Nine Months Ended September 30,	
	2020	2019
	(In thousands)	
Repurchase of common stock	\$ (3,998)	\$ –
Dividend on Series A Redeemable Convertible Preferred Stock	(1,120)	–
Issuance of Senior Secured Notes, net of lender fee	110,437	–
Senior Secured Notes issuance costs paid to other parties	(496)	–
Issuance of Series B warrants	4,600	–
Proceeds from exercise of stock options	48	79
Net cash provided by financing activities	<u>\$ 109,471</u>	<u>\$ 79</u>

Stock Repurchase Program

On August 5, 2019, our Board of Directors approved a stock repurchase program, which authorized the purchase of up to \$10.0 million of the Company's common stock through open market purchases, through block trades, through 10b5-1 plans, or by means of private purchases, from time to time, through July 31, 2020. In determining whether or not to repurchase any shares of Acacia's common stock, Acacia's Board of Directors consider such factors as the impact of the repurchase on Acacia's cash position, as well as Acacia's capital needs and whether there is a better alternative use of Acacia's capital. Acacia has no obligation to repurchase any amount of its common stock under the Stock Repurchase Program.

During the six months ended June 30, 2020, we repurchased 1,684,537 shares at an average price of \$2.37 per share for \$3,999,000. Repurchases to date were made in the open market in compliance with applicable SEC rules. The authorization to repurchase shares presented an opportunity to reduce the outstanding share count and enhance stockholder value. Refer to Note 7 to the condensed consolidated financial statements elsewhere herein for additional information regarding our stock repurchases in 2020.

Starboard Investment

On November 18, 2019, the Company entered into the Securities Purchase Agreement with Starboard and the Buyers pursuant to which the Buyers purchased (i) 350,000 shares of Series A Preferred Stock at an aggregate purchase price of \$35,000,000, and Series A Warrants to purchase up to 5,000,000 shares of the Company's common stock.

On February 25, 2020, pursuant to the terms of the Securities Purchase Agreement with Starboard and the Buyers, the Company issued Series B Warrants to purchase up to 100 million shares of the Company's common stock at an exercise price of either (i) \$5.25 per share, if exercising by cash payment, or (ii) \$3.65 per share, if exercising by cancellation of a portion of Notes. The Company issued the Series B Warrants for an aggregate purchase price of \$4.6 million.

On June 4, 2020, pursuant to the Securities Purchase Agreement signed in November 2019, the Company issued \$115 million in Notes to the Buyers. Per the Supplemental Agreement, interest is payable semiannually at a rate of 6.00% per annum, and in an event of default, the interest rate is increased to 10% per annum.

On June 30, 2020, the Company entered into the Exchange Agreement with Merton and Starboard, on behalf of itself and on behalf of certain funds and accounts under its management, including the holders of the Notes. Pursuant to the Exchange Agreement, the holders of the Notes exchanged the entire outstanding principal amount for New Notes issued by Merton having an aggregate outstanding original principal amount of \$115 million.

Refer to Notes 2, 10, 11, 12 and 13 to the condensed consolidated financial statements and elsewhere herein for more information related to the Starboard Securities.

Working Capital

Working capital at September 30, 2020 increased to \$227.7 million, as compared to \$160.1 million at December 31, 2019. Consolidated accounts receivable from licensees decreased to \$0.3 million at September 30, 2020, compared to \$0.5 million at December 31, 2019. Accounts payable, accrued expenses and accrued compensation increased to \$10.2 million at September 30, 2020, from \$9.5 million at December 31, 2019. Consolidated royalties and contingent legal fees payable increased to \$14.2 million at September 30, 2020, from \$2.2 million at December 31, 2019.

The royalties and contingent legal fees payable are generally scheduled to be paid in the subsequent quarter upon our receipt of the related fee payments from licensees, in accordance with the underlying contractual arrangements.

Critical Accounting Estimates

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

The SEC has defined a company's critical accounting policies as the ones that are most important to the portrayal of a company's financial condition and results of operations, and which require a company to make its most difficult and subjective judgments. A summary of significant accounting policies and a description of accounting policies that are considered critical may be found in the audited condensed consolidated financial statements and notes thereto and under the caption "Management's Discussion and Analysis of Financial Condition and Results of Operations - Critical Accounting Policies" included in our Annual Report. In addition, as set forth in Note 2 to the condensed consolidated financial statements included in this report, certain accounting policies were identified during the current period, based on activities occurring during the current period, as critical and requiring significant judgments and estimates.

Recently Adopted Accounting Pronouncements

Refer to Note 8 to the condensed consolidated financial statements elsewhere herein for additional information regarding our recently adopted accounting pronouncements for the periods presented herein.

Off-Balance Sheet Arrangements

As of September 30, 2020, we did not have any relationships with any unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, which would have been established to facilitate any off-balance sheet arrangements or for any other contractually specified purposes.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

The primary objective of our short-term investment activities is to preserve principal while concurrently maximizing the income we receive from our trading securities without significantly increasing risk. Some of the securities that we invest in may be subject to interest rate risk and/or market risk. This means that a change in prevailing interest rates, with respect to interest rate risk, or a change in the value of the United States equity markets, with respect to market risk, may cause the principal amount or market value of the trading securities to fluctuate. For example, if we hold a security that was issued with a fixed interest rate at the then-prevailing rate and the prevailing interest rate later rises, the current value of the principal amount of our investment may decline. To minimize these risks in the future, we intend to maintain our portfolio of cash equivalents and trading securities in a variety of securities, including commercial paper, money market funds, high-grade corporate bonds, government and non-government debt securities and certificates of deposit. In general, money market funds are not subject to market risk because the interest paid on such funds fluctuates with the prevailing interest rate. Accordingly, a 100 basis point increase in interest rates or a 10% decline in the value of the United States equity markets would not be expected to have a material impact on the value of such money market funds. Investments in U.S. government and corporate fixed income securities are subject to interest rate risk and will decline in value if interest rates increase. However, due to the relatively short duration of our debt trading securities portfolio, an immediate 100 basis point increase in interest rates would have no material impact on our financial condition, results of operations or cash flows. Declines in interest rates over time will, however, reduce our interest income.

During the quarter ended June 30, 2020, we sold all of our investment in debt trading securities, comprised of AAA rated money market funds that invest in first-tier only securities, which primarily include domestic commercial paper, securities issued or guaranteed by the U.S. government or its agencies, U.S. bank obligations, and fully collateralized repurchase agreements (included in cash and cash equivalents in the accompanying condensed consolidated balance sheets), and direct investments in short term, highly liquid, investment grade, U.S. government and corporate securities (included in "Trading securities – debt" in the accompanying condensed consolidated balance sheets).

Investment Risk

We are exposed to investment risks related to changes in the underlying financial condition of certain of our equity investments in these technology companies. The fair value of these investments can be significantly impacted by the risk of adverse changes in securities markets generally, as well as risks related to the performance of the companies whose securities we have invested in, risks associated with specific industries, and other factors. These investments are subject to significant fluctuations in fair value due to the volatility of the securities markets and of the underlying businesses.

As of September 30, 2020 and December 31, 2019, the carrying value of our common stock and warrants, including equity securities forward contract and derivatives, in public and private companies was \$159.6 million and \$18.6 million, respectively.

We record our common stock and warrant investments in publicly traded companies at fair value, which are subject to market price volatility. As of September 30, 2020, a hypothetical 10% adverse change in the market price of our investments in publicly traded common stock would have resulted in a decrease of approximately \$0.3 million in the fair value of our equity warrant investments in Veritone and a decrease of approximately \$4.3 million in our other equity investments. We evaluate our equity and equity warrant investments in private companies for impairment when events and circumstances indicate that the decline in fair value of such assets below the carrying value is other-than temporary.

Item 4. Controls and Procedures

(i). Evaluation of Disclosure Controls and Procedures

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of our disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act.

Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that, as of September 30, 2020, our disclosure controls and procedures were effective to ensure that the information required to be disclosed by us in the reports that we file or submit under the Exchange Act is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure, and that such information is recorded, processed, summarized and reported within the time periods prescribed by the SEC.

(ii). Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting that occurred during our last fiscal quarter (the quarter ended September 30, 2020) that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

(iii). Inherent Limitations on Effectiveness of Controls

Our management, including our Chief Executive Officer and Chief Financial Officer, does not expect that our disclosure controls or our internal control over financial reporting will prevent or detect all error and all fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the control system's objectives will be met. The design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Further, because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud, if any, have been detected. The design of any system of controls is based in part on certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Projections of any evaluation of the effectiveness of controls to future periods are subject to risks. Over time, controls may become inadequate because of changes in conditions or deterioration in the degree of compliance with policies or procedures.

PART II--OTHER INFORMATION

Item 1. Legal Proceedings

On September 6, 2019, Slingshot Technologies, LLC, or Slingshot, filed a lawsuit in Delaware Chancery Court against the Company, Acacia Research Group, LLC, and Monarch Networking Solutions LLC, or collectively, the Acacia Entities, Acacia board member Katharine Wolanyk, and Transpacific IP Group, Ltd., or Transpacific. Slingshot alleges that the Acacia Entities misappropriated its confidential and proprietary information, purportedly furnished to the Acacia Entities by Ms. Wolanyk, in acquiring a patent portfolio from Transpacific after Slingshot's exclusive option to purchase the same patent portfolio from Transpacific had already expired. Slingshot seeks monetary damages, as well as equitable and injunctive relief related to its alleged right to own the portfolio. The Acacia Entities maintain that Slingshot's allegations are baseless, that Ms. Wolanyk had no involvement in the acquisition, that the Acacia Entities neither had access to nor used Slingshot's information in acquiring the portfolio, that the Acacia Entities acquired the portfolio as a result of the independent efforts of its IP licensing group, and that Slingshot suffered no damages given its exclusive option to purchase the portfolio had already ended and it has proven itself incapable of closing on the portfolio purchase.

Item 1A. Risk Factors

An investment in our common stock involves risks. Before making an investment decision, you should carefully consider all of the information in this Quarterly Report on Form 10-Q, including in the section entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations" in Part II, Item 1A in this Quarterly Report on Form 10-Q, as well as our condensed consolidated financial statements and the accompanying notes thereto. In addition, you should carefully consider the risks and uncertainties described below, and in the section entitled "Risk Factors" in Part I, Item 1A of our Annual Report, as well as in our other public filings with the SEC. If any of the identified risks are realized, our business, financial condition, operating results and prospects could be materially and adversely affected. In that case, the trading price of our common stock may decline, and you could lose all or part of your investment. In addition, other risks of which we are currently unaware, or which we do not currently view as material, could have a material adverse effect on our business, financial condition, operating results and prospects.

Risks related to COVID-19

Public health threats such as COVID-19 could have a material adverse effect on our operations, the operations of our business partners, and the global economy as a whole.

Public health threats and other highly communicable diseases, outbreaks of which have already occurred in various parts of the world, could adversely impact our operations, as well as the operations of our licensees and other business partners. With regard to COVID-19, we do not expect the current situation to present direct risks to our business. Our cash is held in major financial institutions in government instruments and high quality short-term bonds. Our business is fully able to operate in a socially-distanced and/or remote capacity and in accordance with applicable laws, policies, and best practices. Our workforce is provided ample paid sick leave, and we have in place robust disaster recovery and business continuity policies that have been revised to account for a long-term remote work contingency such as this. However, the ongoing pandemic may present risks that we do not currently consider material or risks that may evolve quickly that could have a materially adverse effect on our business, financial condition, operating results, and/or prospects.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

None.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

None.

Item 6. Exhibits

EXHIBIT

NUMBER

EXHIBIT

31.1#	Certification of Principal Executive Officer Pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934
31.2#	Certification of Principal Financial Officer Pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934
32.1**#	Certification of Principal Executive Officer Pursuant to Rule 13a-14(b)/15d-14(b) of the Securities Exchange Act of 1934 and 18 U.S.C. Section 1350
32.2**#	Certification of Principal Financial Officer Pursuant to Rule 13a-14(b)/15d-14(b) of the Securities Exchange Act of 1934 and 18 U.S.C. Section 1350
101#	Interactive Data Files Pursuant to Rule 405 of Regulation S-T

Filed herewith.

* If any, indicates management contract or compensatory plan.

** The certifications attached as Exhibits 32.1 and 32.2 that accompany this Quarterly Report pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, shall not be deemed "filed" by the Registrant for purposes of Section 18 of the Exchange Act and are not to be incorporated by reference into any of the Registrant's filings under the Securities Act or the Exchange Act, irrespective of any general incorporation language contained in any such filing.

SIGNATURES

Pursuant to the requirements 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.

ACACIA RESEARCH CORPORATION

Date: November 9, 2020

/s/ Clifford Press
By: **Clifford Press**
Chief Executive Officer
(Principal Executive Officer and Duly Authorized Signatory)

Date: November 9, 2020

/s/ Richard Rosenstein
By: **Richard Rosenstein**
Chief Financial Officer
(Principal Financial Officer)