

INKTOMI CORP
Form 10-K/A
February 04, 2003

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UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K/A

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

For the fiscal year ended September 30, 2002

0-24339

(Commission File Number)

INKTOMI CORPORATION

(Exact name of Registrant as specified in its charter)

Delaware
(State of Incorporation)

94-3238130
(I.R.S. Employer Identification No.)

4100 East Third Avenue

Foster City, California 94404
(Address of principal executive offices)

(650) 653-2800

(Registrant's telephone number, including area code)

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

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

Common Stock, \$0.001 Par Value
(Title of Class)

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 if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Act). Yes No

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Based on the closing sale price of the Common Stock on the NASDAQ National Market System on November 30, 2002, the aggregate market value of the voting stock held by non-affiliates of the Registrant was \$249,014,641. Shares of Common Stock held by each officer and director and by each person known by the Company to own 5% or more of the outstanding Common Stock have been excluded in that such persons may be deemed to be affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

The number of shares outstanding of Registrant's Common Stock, \$0.001 par value, was 162,754,667 at November 30, 2002.

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PART III

Item 12. Security Ownership of Certain Beneficial Owners and Related Stockholder Matters.

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INKTOMI CORPORATION

FORM 10-K/A

For the Fiscal Year Ended September 30, 2002

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This Annual Report on Form 10-K/ A is being filed for the purpose of correcting certain information with respect to Inktomi's equity compensation plans provided under Item 12 of Part III of Form 10-K.

PART III**Item 12. Security Ownership of Certain Beneficial Owners and Related Stockholder Matters.****EQUITY COMPENSATION PLAN INFORMATION**

The following table provides information as of September 30, 2002 about our common stock that may be issued upon the exercise of options, warrants and rights under all of our existing equity compensation plans, including the 1998 Stock Plan, the 1998 Nonstatutory Stock Option Plan, and 1998 Employee Stock Purchase Plan, each as amended, as well as options assumed in acquisitions.

| Plan Category | Number of Securities to be Issued upon Exercise of Outstanding Options, Warrants and Rights | Weighted-Average Exercise Price of Outstanding Options, Warrants and Rights | Number of Securities Remaining Available for Future Issuance under Equity Compensation Plans (excluding securities reflected in the first column) |
|---|--|--|--|
| Equity compensation plans approved by security holders(1) | 9,981,394 | \$4.01 | 2,412,298 |
| Equity compensation plans not approved by security holders(2) | 16,487,557 | 4.11 | 3,260,346 |
| Total | 26,468,951 | 4.09 | 5,672,644 |

(1) Includes securities to be issued and available for future issuance under our 1998 Stock Plan and our 1998 Employee Stock Purchase Plan.

(2) Includes securities to be issued and available for future issuance under our 1998 Nonstatutory Stock Option Plan.

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Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized, on February 3, 2003.

INKTOMI CORPORATION

/s/ DAVID C. PETERSCHMIDT

David C. Peterschmidt
*Chairman of the Board, President
and Chief Executive Officer*

Pursuant to the requirements of the Securities Exchange Act of 1934, this Report has been signed below by the following persons in the capacities and on the dated indicated.

| Signature | Title | Date |
|---|--|------------------|
| <u>/s/ DAVID C. PETERSCHMIDT</u> David C. Peterschmidt | Chairman of the Board, President, Chief Executive Officer (Principal Executive Officer) | February 3, 2003 |
| <u>/s/ RANDY GOTTFRIED</u> Randy Gottfried | Senior Vice President and Chief Financial Officer (Principal Financial and Accounting Officer) | February 3, 2003 |
| <u>/s/ ERIC BREWER*</u> Eric A. Brewer | Director and Chief Scientist | February 3, 2003 |
| <u>/s/ ALLEN J. GULA, JR.*</u> Allen J. Gula, Jr. | Director | February 3, 2003 |
| <u>/s/ GREG MYERS*</u> Greg Myers | Director | February 3, 2003 |
| <u>/s/ ROGER NOALL*</u> Roger Noall | Director | February 3, 2003 |
| *By <u>/s/ RANDY GOTTFRIED</u> Attorney-in-fact | | |

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CERTIFICATIONS

I, David C. Peterschmidt, certify that:

1. I have reviewed this annual report on Form 10-K/A of Inktomi Corporation;
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly represent in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:
 - a. designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;
 - b. evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the "Evaluation Date"); and
 - c. presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
 - a. all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
 - b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officer and I have indicated in this annual report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

By:

/s/ DAVID C. PETERSCHMIDT

David C. Peterschmidt
President and Chief Executive Officer

Date: February 3, 2003

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CERTIFICATIONS

I, Randy Gottfried, certify that:

1. I have reviewed this annual report on Form 10-K/A of Inktomi Corporation;
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly represent in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:
 - a. designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;
 - b. evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the Evaluation Date); and
 - c. presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
 - a. all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
 - b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officer and I have indicated in this annual report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

By:

/s/ RANDY GOTTFRIED

Randy Gottfried
Chief Financial Officer

Date: February 3, 2003

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| Exhibit Number | Description |
|-------------------|---|
| 3.2(3) | Amended and Restated Certificate of Incorporation of Inktomi. |
| 3.2a(6) | Amendment to Amended and Restated Certificate of Incorporation of Inktomi. |
| 3.2b(11) | Amendment to Amended and Restated Certificate of Incorporation of Inktomi. |
| 3.4(3) | Bylaws of Inktomi. |
| 4.1(3) | Specimen Common Stock Certificate. |
| 10.1(3) | Form of Indemnification Agreement between Inktomi and each of its directors and officers. |
| 10.2(14) | 1998 Stock Plan and form of agreement thereunder. |
| 10.3(3) | 1998 Employee Stock Purchase Plan and form of agreements thereunder. |
| 10.4(3) | 1996 Equity Incentive Plan and form of agreement thereunder. |
| 10.5(3) | Fifth Amended and Restated Investors Rights Agreement dated as February 13, 1998 among Inktomi and certain of its security holders named therein. |
| 10.6(3) | Executive Employment Agreement dated as of July 1, 1996 between Inktomi and David C. Peterschmidt. |
| 10.7(10) | Agreement of Sublease dated July 1, 1998 by and between Designs, Inc. and Atreve Software, Inc. |
| 10.9(12) | Ultraseek Stock Option Plan and form of agreement thereunder. |
| 10.10(11) | Preferred Stock Rights Agreement dated as of August 10, 2000 between Inktomi and Wells Fargo Shareowners Services. |
| 10.11(4) | C2B Technologies Inc. (formerly BeyondNews, Inc.) 1997 Stock Plan and form of agreement thereunder. |
| 10.12(2) | Registration Rights Agreement dated September 25, 1998 between Inktomi and former stockholders of C2B Technologies Inc. (included in Exhibit 2.1). |
| 10.13(14) | 1998 Nonstatutory Stock Option Plan and form of agreement thereunder. |
| 10.14(5) | Declaration of Registration Rights dated April 30, 1999 for the benefit of former Impulse! Buy Network, Inc. stockholders (included in Exhibit 2.2). |
| 10.15(1) | Amended and Restated Loan and Security agreement dated as of September 2, 1998 between Inktomi and Silicon Valley Bank. |
| 10.16(6) | Amendment dated January 28, 1999 to Amended and Restated Loan and Security Agreement dated as of September 2, 1998 between Inktomi and Silicon Valley Bank. |
| 10.17(8) | Impulse! Buy Network, Inc. 1997 Stock Plan and form of agreement thereunder. |
| 10.18(9) | WebSpective Software, Inc. (formerly Atreve Software, Inc.) 1997 Stock Option Plan and form of agreement thereunder. |
| 10.19(7) | Declaration of Registration Rights dated October 1, 1999 for the benefit of former WebSpective Software, Inc. stockholders (included in Exhibit 2.3). |
| 10.20(14) | Amendment to 1996 Equity Incentive Plan. |
| 10.21(14) | Amendment to C2B Technologies 1997 Stock Plan |
| 10.22(14) | Amendment to Impulse! Buy Network, Inc. 1997 Stock Plan. |
| 10.23(14) | Amendment to WebSpective Software, Inc. 1997 Stock Plan. |
| 10.24(13) | FastForward Networks, Inc. 1998 Stock Plan and form of agreement thereunder. |
| 10.25(15) | Amendment to the Ultraseek Stock Option Plan. |
| 10.26(15) | Amendment to the FastForward Networks, Inc. 1998 Stock Plan. |
| 10.27(16) | Promissory Note dated December 10, 2001 executed by David Peterschmidt for the benefit of Inktomi Corporation. |
| 10.28(17) | Registration Rights Agreement dated September 5, 2002 for the benefit of the landlords of our Parkside Towers office facility. |

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| Exhibit Number | Description |
|-------------------|---|
| 10.29(18) | Loan Modification Agreement dated September 30, 2002 between Inktomi and Silicon Valley Bank. |
| 10.30(18) | Registration Rights Agreement dated August 13, 2002 for the benefit of the former stockholders of Quiver, Inc. |
| 10.31(20) | Portal Services Agreement between Inktomi Corporation and Microsoft Corporation dated October 28, 1999 with amendments thereto dated June 1, 2000, January 17, 2001, May 1, 2001, June 13, 2001, March 5, 2002, October 1, 2002 and December 10, 2002 |
| 10.32(20) | Severance Agreement and Release dated December 17, 2002 between Inktomi and Dominic Gattuso. |
| 10.33(20) | Office Lease Agreement dated December 19, 2002 between Walton Bayside Investors IV, L.L.C. and Inktomi Corporation. |
| 10.34(20) | Severance Agreement and Release dated December 17, 2002 between Inktomi and Keyor Patel |
| 10.35(20) | Termination Letter dated April 9, 2002 between Inktomi Corporation and Ted Hally |
| 10.36(19) | Merger Agreement dated December 23, 2002 between Inktomi, Yahoo! Inc. and a wholly owned subsidiary of Yahoo! Inc. |
| 21.1(20) | Subsidiaries |
| 23.1(20) | Consent of PricewaterhouseCoopers, LLP |
| 99.1 | Certification of David C. Peterschmidt, Chief Executive Officer, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 |
| 99.2 | Certification of Randy Gottfried, Chief Financial Officer, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 |

- (1) Incorporated by reference from Inktomi s Registration Statement on Form S-1 (Reg. No. 333-66661), as amended.
- (2) Incorporated by reference from Inktomi s Current Report on Form 8-K filed with the Commission on October 9, 1998, as amended November 2, 1998.
- (3) Incorporated by reference from Inktomi s Registration Statement on Form S-1 (Reg. No. 333-50247), as amended.
- (4) Incorporated by reference from Inktomi s Registration Statement on Form S-8 (Reg. No. 333-71037).
- (5) Incorporated by reference from Inktomi s Current Report on Form 8-K filed with the Commission on May 13, 1999.
- (6) Incorporated by reference from Inktomi s Quarterly Report on Form 10-Q filed with the Commission on May 17, 1999.
- (7) Incorporated by reference from Inktomi s Current Report on Form 8-K filed with the Commission on October 15, 1999, as amended November 5, 1999.
- (8) Incorporated by reference from Inktomi s Registration Statement on Form S-8 (Reg. No. 333-80195).
- (9) Incorporated by reference from Inktomi s Registration Statement on Form S-8 (Reg. No. 333-89581).
- (10) Incorporated by reference from Inktomi s Quarterly Report on Form 10-Q filed with the Commission on February 14, 2000.
- (11) Incorporated by reference from Inktomi s Current Report on Form 8-A filed with the Commission on August 11, 2000.
- (12) Incorporated by reference from Inktomi s Registration Statement on Form S-8 (Reg. No. 333-42102).
- (13) Incorporated by reference from Inktomi s Registration Statement on Form S-8 (Reg. No. 333-49874).
- (14) Incorporated by reference from Inktomi s Annual Report on Form 10-K/ A filed with the Commission on January 2, 2001.

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- (15) Incorporated by reference from Inktomi's Quarterly Report on Form 10-Q filed with the Commission on February 14, 2001.
- (16) Incorporated by reference from Inktomi's Quarterly Report on Form 10-Q filed with the Commission on August 14, 2002.
- (17) Incorporated by reference from Inktomi's Registration Statement on Form S-3 (Reg. No. 333-101258).
- (18) Incorporated by reference from Inktomi's Registration Statement on Form S-3 (Reg. No. 333-98551).
- (19) Incorporated by reference from Inktomi's Current Report on Form 8-K filed with the Commission on December 26, 2002.
- (20) Incorporated by reference from Inktomi's Annual Report on Form 10-K filed with the Commission on December 30, 2002.
 - (b) Reports on Form 8-K

On September 6, 2002 we filed a Current Report on Form 8-K in connection with the restructuring of certain of Inktomi's properties.

On November 15, 2002 we filed a Current Report on Form 8-K announcing the sale of Inktomi's enterprise search software business to Verity, Inc.

On December 23, 2002 we filed a Current Report on Form 8-K announcing the execution of a merger agreement between Inktomi, Yahoo! Inc. and a wholly owned subsidiary of Yahoo! Inc.

On December 26, 2002 we filed a Current Report on Form 8-K which included the merger agreement entered into between Inktomi, Yahoo! Inc. and a wholly owned subsidiary of Yahoo! Inc.