

UROPLASTY INC
Form 10KSB40/A
March 27, 2002

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

FORM 10-KSB/A

Annual Report Pursuant To Section 13 or 15(d) of the Securities Exchange Act of 1934

For the Fiscal Year Ended March 31, 2001

Commission File No. 000-20989

UROPLASTY, INC.

(Name of Small Business Issuer in its Charter)

Minnesota, U.S.A.

(State or other jurisdiction of
incorporation or organization)

41-1719250

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

2718 Summer Street NE

Minneapolis, Minnesota 55413-2820

(Address of principal executive offices)

(612) 378-1180

(Issuer's telephone number, including area code)

Securities registered under Section 12(g) of the Exchange Act: Common Stock, \$.01 par value (Title of class)

Check whether the issuer (1) filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act during the past 12 months (or for such shorter period that the Company was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

YES NO

Check if disclosure of delinquent filers in response to Item 405 of Regulation S-B is not contained in this form, and no disclosure will be contained, to the best of Company's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-KSB or any amendment to this Form 10-KSB.

Issuer's revenues for its most recent fiscal year: \$5,668,483

The aggregate market value of the voting stock held by non-affiliates computed by reference to the price at which the stock was sold or the average bid and asked prices of such stock as of May 25, 2001 was \$10,737,101.

The number of shares outstanding of the issuer's only class of common stock on May 25, 2001 was 6,049,071.

Documents Incorporated By Reference: Portions of the Company's Proxy Statement for its 2001 Annual Meeting of Shareholders (the Proxy Statement), are incorporated by reference in Part III.

Transitional Small Business Disclosure Format:

YES NO

PART I

ITEM 1. DESCRIPTION OF BUSINESS

Patents, Trademarks, and Licenses

The Company's success depends in part on its ability to obtain and maintain patent protection for its products, preserve its trade secrets, and operate without infringing the proprietary rights of third parties. The Company seeks to protect its technology by filing patent applications for patentable technologies it considers important to the development of its business based on an analysis of the cost of obtaining a patent, the likely scope of protection, and the relative benefits of patent protection compared to trade secret protection, among other considerations. The Company also relies upon trade secrets, know-how, and continuing technological innovation to develop and maintain its competitive position.

Multiple patents covering the Macroplastique materials, processes, and applications have been issued to the Company by the Patent Offices in the United States, United Kingdom, Japan, Germany, The Netherlands, and Canada. Such patents will expire in the U.S. at various times between 2010 and 2013. Applications are also currently pending in various other European countries. There can be no assurance any of the Company's pending and/or future U.S. and/or foreign patent applications will result in issued patents, or that any issued patents will be of sufficient scope or strength to provide meaningful protection of the Company's products. The coverage sought in a patent application can be denied or significantly reduced before the patent is issued. In addition, there can be no assurance any current and/or future U.S. and/or foreign patents of the Company will not be challenged or circumvented by competitors or others, or that such patents will be found to be valid or sufficiently broad to protect the Company's technology or provide the Company with any competitive advantage. Should attempts be made to challenge, circumvent, or invalidate the Company's patents in the U.S. Patent and Trademark Office or courts of competent jurisdiction, including administrative boards or tribunals, the Company may have to participate in legal or quasi-legal proceedings therein to maintain, defend, and/or enforce its rights in these patents. Any legal proceedings to maintain, defend, and/or enforce the Company's patent rights could be lengthy and costly, with no guarantee of success.

The Company also relies heavily upon trade secrets and other proprietary information. The Company seeks to maintain the confidentiality of such information by requiring employees, consultants, and other parties to sign confidentiality agreements, and by limiting access by parties outside the Company to such information. There can be no assurance, however, these measures will prevent the unauthorized disclosure or use of this information or that others will not be able to independently develop such information. Additionally, there can be no assurance any agreements regarding confidentiality and non-disclosure will not be breached, or, in the event of any breach, that adequate remedies would be available to the Company.

In July 21, 1998, the Company announced that the United States Patent and Trademark Office (USPTO) had informed the Company that the USPTO would, as requested by the Company, initiate an interference proceeding between the Company and Advanced UroScience, Inc. (AUI), White Bear Lake, Minnesota, to determine which company was the first to invent pyrolytic carbon-coated micro beads for use in treating urinary incontinence. The USPTO had not, as of the date of this filing, formally declared the interference proceeding. Although the USPTO originally granted the applicable patent to AUI, the interference proceeding may result in a determination that either Uroplasty, Inc. or AUI is the proper holder, or that a patent should not have been granted.

During the third quarter of fiscal 1999, the Company commenced a related lawsuit against AUI for misappropriation of trade secrets pertaining to the pyrolytic carbon-coated micro beads. AUI, subsequent to December 31, 1998, brought a counterclaim against the Company with respect to such matter. In October 1999, the Company announced that the U.S. District Court for Minnesota had granted a motion by AUI to dismiss the Company's claims against AUI, which the Company appealed.

In early 2000, the U.S. Court of Appeals, Eighth Circuit, notified the Company that pursuant to the Company's request, the appeal had been transferred to the Federal Circuit, and in May 2000 the Company filed its appeal of the District Court's order granting summary judgment with the U.S. Court of Appeals for the Federal Circuit.

In February 2001, the United States Court of Appeals for the Federal Circuit (the Circuit Court) granted the Company's appeal of the dismissal of its claims against Carbon Medical Technologies, Inc. The Circuit Court vacated the dismissal by the U.S. District Court for Minnesota due to lack of jurisdiction and remanded the case to State Court in Minnesota; a motion to dismiss brought by Carbon Medical Technologies, Inc. is now pending in Ramsey County District Court in Minnesota.

In 1992, the Company and its then parent, Bioplasty, Inc., were sued by Collagen Corporation, which alleged that Macroplastique infringed on one of its U.S. patents for a bulking agent. The parties entered into a license and settlement agreement in 1993 pursuant to which the Company

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pays Collagen a royalty of 5% of net sales in the U.S. of Macroplastique products with a minimum of \$50,000 per year. The duration of the Collagen Corporation agreement is

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through May 1, 2006. Collagen has not brought any new or renewed legal action in connection with its allegations. There can be no assurance, however, Collagen and/or any other third party will not pursue legal action with respect to these matters.

Claims by competitors such as Collagen and other third parties that the Company's products allegedly infringe the patent or other intellectual property rights of others could have a material adverse effect on the Company. There has been substantial litigation regarding patent and other intellectual property rights in the medical device industry, and intellectual property litigation may be used against the Company as a means of gaining a competitive advantage. Intellectual property litigation is complex, time-consuming, and expensive, and the outcome of such litigation is difficult to predict. Any future litigation, regardless of outcome, could result in substantial expense to the Company and significant diversion of the efforts of the Company's technical and management personnel. An adverse outcome in any litigation could subject the Company to significant liabilities to third parties, require disputed rights to be licensed from others, if licenses to such rights could be obtained, or require the Company to cease making, using, or selling certain products. There can be no assurance that any licenses required under any patents or proprietary rights would be made available on terms acceptable to the Company, if at all. In addition to being costly, protracted litigation to defend or prosecute intellectual property could result in the Company being unable to commercialize Macroplastique on a timely basis or at all, and could have a material adverse effect on the Company's business, financial condition, and results of operations.

Although the Company intends to apply for additional patents and vigorously defend issued patents, management believes its success as a business will depend primarily upon its development and marketing skills, and the quality and economic value of its products rather than on its ability to obtain and defend patents.

The Company has a Royalty Agreement with three individuals, two of whom are former officers and directors. Under such Agreement, the Company pays royalties, in the aggregate, of three to five percent of net sales of Macroplastique and Bioplastique, subject to a monthly minimum of \$4,500. The royalties payable under this Agreement will continue until the patent referenced in the Agreement expires in 2010.

In December 1995, the Company obtained a license from a British surgeon, which became superseded by a subsequent Agreement entered into by the parties in October 1998. Pursuant to this subsequent Agreement, the Company received an absolute assignment of a patent relating to the Macroplastique Implantation System in return for a royalty of 10 British pounds for each unit sold during the life of the patent. The Company began commercialization of the product outside the U.S. in March 2000.

ITEM 2. DESCRIPTION OF PROPERTY

The Company owns office and warehouse space at Hofkamp 2, 6161 DC Geleen, The Netherlands. In addition, the Company leases office, warehouse, laboratory and production space through February 2003 at 2718 Summer Street NE, Minneapolis Minnesota 55413-2820, USA; office and warehouse space through September 2011 (subject to a right of the Company to terminate early starting in 2006) at Unit 3, Woodside business Park, Whitley Wood Lane, Reading, Berkshire RG2 8LW, United Kingdom; and office, warehouse, laboratory and manufacturing space through June 2002 at Industrieweg 12, 5627 BS Eindhoven, The Netherlands. The Company considers its facilities adequate; however, additional office, production, and warehouse space will likely be necessary upon FDA approval and subsequent increases in production, marketing, and sales activities in the U.S.

PART III

ITEM 9. DIRECTORS, EXECUTIVE OFFICERS, PROMOTERS AND CONTROL PERSONS; COMPLIANCE WITH SECTION 16(a) OF THE EXCHANGE ACT

The Company's Directors and Executive Officers as of March 31, 2001 were as follows:

| Name | Age | Position | Director Since | Term expires |
|-------------------------|------------|---|-----------------------|---------------------|
| Daniel G. Holman | 55 | Chairman, President, CEO, CFO | 1994 | 2003 |
| Joel R. Pitlor | 62 | Director | 1994 | 2001 |
| R. Patrick Maxwell | 56 | Director | 1994 | 2002 |
| Thomas E. Jamison | 41 | Director | 2000 | 2001 |
| Christopher Harris | 42 | Vice President of Corporate Development | | |
| Larry Heinemann | 48 | Vice President of Sales & Marketing | | |
| Susan Hartjes Holman | 47 | Vice President of Operations & Regulatory Affairs, Secretary | | |
| Arie J. Koole | 37 | Controller | | |

All directors are members of the Nominating Committee; all directors except Mr. Holman are members of the Compensation Committee; and Mr. Maxwell and Mr. Jamison are members of the Audit Committee.

The Company has entered into Employment Agreements, which are terminable at will by either party upon thirty day written notice, with Mr. Holman, Ms. Holman, Mr. Heinemann, and Mr. Harris, the terms of which, among other things, specify a base salary subject to annual adjustment by mutual agreement of the Company and the Employee, and a severance payment to the employee upon employment termination without cause. The initial salaries, which can be increased annually in the discretion of the Board, were \$180,200, \$121,000, \$78,000 and \$74,000, respectively. Any severance amounts payable under the Agreement shall be limited to the Employee's base salary for not less than four months and not longer than twelve months after employment termination, depending on the Employee's years of service. Contemporaneously with the execution of the Employment Agreement, each of the officers executed an Employee Confidentiality, Inventions, Non-Solicitation, and Non-Compete Agreement, certain terms of which specify the Employee shall not disclose confidential information, shall assign to the Company without charge all intellectual property relating to the Company's business which is created or conceived during the term of employment, shall not encourage Employees to leave the employment of the Company for any reason and shall not compete with the Company during the term of employment and for a period of eighteen months thereafter. Also in connection with the execution of these Agreements, the officers were granted varying amounts of stock options to purchase the Company's Common Stock at the fair market value at date of grant of \$2.50 per share. In all cases the options are exercisable for five years or until one year after employment termination (subject to certain termination provisions), whichever date is earlier, and vest in three equal amounts on each one year anniversary date subsequent to the option grant date.

ITEM 13. EXHIBITS AND REPORTS ON FORM 8-K

(a) Exhibits incorporated by reference (Rule 12b-23). The following Exhibits are incorporated by reference to the Company's Registration Statement on Form 10SB filed July 10, 1996 or the Company's Annual Report on Form 10-KSB for the fiscal year ended March 31, 2000.

| Number | Description |
|---------------|---|
| 2.1 | First Amended Joint Plan of Reorganization (Modified) of the Company dated January 31, 1994 (Filed as Exhibit 8.1 to Form 10SB) |
| 3.1 | Articles of Incorporation of Uroplasty, Inc. (Filed as Exhibit 2.1 to Form 10SB) |
| 3.2 | Bylaws of Uroplasty, Inc. (Filed as Exhibit 2.2 to Form 10SB) |
| 4.1 | Form of Stock Certificate of the Company representing shares of the Company's Common Stock (Filed as Exhibit 3.1 to Form 10SB) |
| 10.1 | Settlement Agreement and Release dated November 30, 1993 by and between Bioplasty, Inc., Bio-Manufacturing, Inc., Uroplasty, Inc., Arthur A. Beisang, Arthur A. Beisang III, MD and Robert A. Ersek, MD (Filed as Exhibit 6.1 to Form 10SB) |

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| Number | Description |
|---------------|--|
| 10.2 | Purchase and Sale Agreement dated December 1, 1995 by and among Bio-Vascular, Inc., Bioplasty, Inc., and Uroplasty, Inc. (Filed as Exhibit 6.2 to Form 10SB) |
| 10.3 | License Agreement dated December 1, 1995 by and between Bio-Vascular, Inc. and Uroplasty, Inc. (Filed as Exhibit 6.3 to Form 10SB) |
| 10.4 | Lease Agreement dated January 10, 1995 between Summer Business Center Partnership and Uroplasty, Inc. (Filed as Exhibit 6.4 to Form 10SB) |
| 10.5 | Unsecured \$640,000 Promissory Note dated March 30, 1994 by and between Bioplasty, Inc., Uroplasty, Inc. and Bioplasty Product Claimants Trust (Filed as Exhibit 6.5 to Form 10SB) |
| 10.6 | Agreement and Satisfaction dated January 30, 1995 by and between Bioplasty Product Claimants Trust and Bioplasty, Inc. (Filed as Exhibit 6.6 to Form 10SB) |
| 10.7 | Asset Sale and Satisfaction of Debt Agreement dated June 23, 1995 by and between Bioplasty, Inc. and Uroplasty, Inc. (Filed as Exhibit 6.7 to Form 10SB) |
| 10.8 | Executory Contract Assumption Stipulation dated December 28, 1993 by and between Bioplasty, Inc., Uroplasty, Inc., and Collagen Corporation (Filed as Exhibit 6.8 to Form 10SB) |
| 10.9 | Settlement and License Agreement dated July 23, 1992 by and between Collagen Corporation, Bioplasty, Inc., and Uroplasty, Inc. (Filed as Exhibit 6.9 to Form 10SB) |
| 10.10 | Employment Agreement between Uroplasty, Inc. and Daniel G. Holman dated December 7, 1999. (Filed as Exhibit 10.10 to Form 10-KSB/03-31-2000.) |
| 10.11 | Employment Agreement between Uroplasty, Inc. and Christopher Harris dated December 7, 1999. (Filed as Exhibit 10.11 to Form 10-KSB/03-31-2000.) |
| 10.12 | Employment Agreement between Uroplasty, Inc. and Donald A. Major dated December 7, 1999. (Filed as Exhibit 10.12 to Form 10-KSB/03-31-2000.) |
| 10.13 | Employment Agreement between Uroplasty, Inc. and Susan Holman dated December 7, 1999. (Filed as Exhibit 10.13 to Form 10-KSB/03-31-2000.) |
| 10.14 | Employment Agreement between Uroplasty, Inc. and Larry Heinemann dated December 7, 1999. (Filed as Exhibit 10.14 to Form 10-KSB/03-31-2000.) |

(b) Exhibits filed.

| Number | Description |
|---------------|--|
| 10.15 | Agreement, dated October 14, 1998, by and between Uroplasty, Inc. and Samir M. Henalla (pertaining to Macroplastique Implantation System). |

SIGNATURES

In accordance with Section 13 or 15(d) of the Securities Exchange Act of 1934, the Company has caused this amended Report to be signed on its behalf by the undersigned, thereunto duly authorized.

Dated: March 26, 2002

UROPLASTY, INC.
By: /s/ DANIEL G. HOLMAN
Daniel G. Holman
President, Chief Executive Officer,
Chief Financial Officer (Principal Financial Officer),
Director (Principal Executive Officer)

In accordance with the Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Company and in the capacities and on the dates indicated.

| Name | Title / Capacity | Date |
|---|--|----------------|
| <u>/s/ DANIEL G. HOLMAN</u> Daniel G. Holman | President, Chief Executive Officer Chief Financial Officer, Director (Principal Executive Officer) | March 26, 2002 |
| <u>/s/ ARIE J. KOOLE</u> Arie J. Koole * _____ | Controller (Principal Accounting Officer) Director | March 26, 2002 |
| Joel R. Pitlor * _____ | Director | |
| R. Patrick Maxwell * _____ | Director | |
| Thomas E. Jamison | | |

* Signature supplied by Power of Attorney as follows:

By: /s/ DANIEL G. HOLMAN
Daniel G. Holman
Attorney-in-Fact