

APPLIED DNA SCIENCES INC

Form 8-K

November 26, 2010

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

FORM 8-K

CURRENT REPORT

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

Date of report (Date of earliest event reported): November 19, 2010

Applied DNA Sciences, Inc
(Exact Name of Registrant as Specified in Charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

002-90539
(Commission File Number)

59-2262718
(IRS Employer
Identification No.)

25 Health Sciences Drive, Suite 113
Stony Brook, New York 11790
(Address of Principal Executive Offices) (Zip Code)

631-444- 8090
(Registrant's telephone number, including area code)

Not Applicable
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2 below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

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- .. Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- .. Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- .. Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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Item 1.01 Entry into a Material Definitive Agreement

Item 2.03 Creation of a Direct Financial Obligation

Item 3.02 Unregistered Sales of Equity Securities

Closing on Private Placement. On November 19, 2010, Applied DNA Sciences, Inc. (the “Company”) issued and sold an aggregate of \$350,000 in principal amount of senior secured convertible notes (the “Notes”) bearing interest at a rate of 10% per annum to “accredited investors,” as defined in regulations promulgated under the Securities Act of 1933, as amended (the “Securities Act”).

The Notes are convertible, in whole or in part, at any time, at the option of the noteholders, into either (A) such number of shares of the Company’s common stock, \$0.001 par value per share (“Common Stock”), determined by dividing (i) the principal amount of each Note, together with any and all accrued and unpaid interest and penalties, by (ii) a conversion price of \$ 0.032825817, which is equal to a 20% discount to the average volume, weighted average price of our Common Stock for the ten trading days prior to issuance (the “Common Conversion Price”) or (B) securities issued in any Subsequent Financing (“Subsequent Securities”) at a conversion price equal to 80% of the price per Subsequent Security paid by investors for Subsequent Securities in a Subsequent Financing (the “Subsequent Financing Price”). A “Subsequent Financing” is the sale by the Company or an affiliate thereof of securities at any time after November 19, 2010 and prior to the earlier of (i) a Qualified Financing or (ii) November 19, 2011. A noteholder may convert its Notes in whole in connection with any one Subsequent Financing or in part in connection with one or more Subsequent Financings.

The Notes shall be automatically converted upon the earlier of (I) November 19, 2011 and (II) the completion of a Qualified Financing at the election of each Purchaser into either (A) shares of Common Stock at the Common Conversion Price, (B) Subsequent Securities at a conversion price equal to 80% of the Subsequent Financing Price, or (C) securities issued in a Qualified Financing (the “Qualified Financing Securities”) at a conversion price equal to 80% of the price per Qualified Financing Security paid by investors for the Qualified Financing Securities in the Qualified Financing. A “Qualified Financing” is the sale by the Company or an affiliate thereof of securities resulting in gross proceeds (before transaction fees and expenses) in a single transaction equal to or in excess of \$10 million.

Upon any Change in Control (as defined in the Notes), the noteholders have the right to require the Company to redeem the Notes, in whole or in part, at a redemption price equal to the Change of Control Redemption Price (as defined in the Notes).

The Notes contain certain events of default that are customarily included in financing of this nature. If an event of default occurs, the noteholders may require the Company to redeem the Notes, in whole or in part, at a redemption price equal to the Event of Default Redemption Price (as defined in the Notes).

Pursuant to a joinder agreement (the “Joinder Agreement to Registration Rights Agreement”), each of the noteholders became party to the registration rights agreement, dated as of July 15, 2010 (the “Registration Rights Agreement”), with the Company, pursuant to which the Company has agreed to prepare and file a registration statement with the Securities Exchange Commission (the “SEC”) to register under the Securities Act of 1933, as amended (the “Securities Act”) resales from time to time of the Conversion Shares issued or issuable upon conversion or redemption of the Notes. The Company is required to file a registration statement within 45 days of receiving a Demand Registration Request (as defined in the Registration Rights Agreement), and to cause the registration statement to be declared effective within 45 days (or 90 days if the registration statement is reviewed by the SEC). The Company will be required to pay penalties to Purchasers in the event that these deadlines are not met.

The Notes bear interest at the rate of 10% per annum and are due and payable in full on November 19, 2011. Until the principal and accrued but unpaid interest under the Notes are paid in full, or converted into Conversion Shares pursuant to their terms, the Company's obligations under the Notes will be secured by a lien on all assets of the Company and the assets of APDN (B.V.I.) Inc., the Company's wholly-owned subsidiary ("APDN BVI"), in favor of Etico Capital, LLC, as Collateral Agent for the Purchasers named therein pursuant to security agreements dated as of the date of July 15, 2010 (the "Security Agreements"), to which each of the noteholders became party pursuant to joinder agreements (the "Joinder Agreements to Security Agreement").

In connection with the sale of the Notes, the Company paid placement agents commissions and discounts aggregating \$54,500. In addition, one of the placement agents was issued a warrant with a seven-year term to purchase 5% of the Notes sold (the "Warrant").

The issuance of Notes and the Warrant, was completed in reliance upon the exemption from registration provided for by Section 4(2) of the Securities Act and by Rule 506 of Regulation D promulgated under the Securities Act. Each of the noteholders represented to the Company in a subscription agreement (the "Subscription Agreement") that it is an "accredited investor" as that term is defined in Rule 501 of Regulation D. This Current Report on Form 8-K shall not constitute an offer to sell, the solicitation of an offer to buy, nor shall there be any sale of these securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state.

Copies of the form of Subscription Agreement, the form of Note, the form of Joinder Agreement to Registration Rights Agreement, the forms of Joinder Agreement to Security Agreement, the form of Registration Rights Agreement, the Security Agreements, and the form of Warrant are attached as exhibits and are incorporated herein by reference.

Maturity Date Extension of Prior Notes. Concurrently with the above private placement of the Notes, the maturity dates of the senior secured convertible notes issued to accredited investors by the Company on July 15, 2010, which terms were reported on our Current Report on Form 8-K filed with the SEC on July 15, 2010, was extended to the later of (i) the maturity date of the Notes or (ii) the maturity date of any other notes to be issued in connection with a financing of up to \$3,000,000 aggregate principal amount of senior secured convertible notes by the Company by January 31, 2011.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits.

Exhibit 10.1	Form of Subscription Agreement by and among Applied DNA Sciences, Inc. and the investors named on the signature pages thereto.
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Exhibit 10.2

Form of Note.

Exhibit 10.3

Form of Joinder Agreement to Registration Rights Agreement.

Exhibit 10.4

Form of Joinder Agreement to Security Agreement.

Exhibit 10.5

Form of Joinder Agreement to Security Agreement (APDN BVI).

Exhibit 10.6	Form of Registration Rights Agreement, previously filed as an exhibit to our Current Report on Form 8-K on July 16, 2010.
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Exhibit 10.7 Security Agreement, dated July 15, 2010, made by the Company in favor of Etico Capital, LLC, previously filed as an exhibit to our Current Report on Form 8-K on July 16, 2010.

Exhibit 10.8 Security Agreement, dated July 15, 2010, made by APDN BVI in favor of Etico Capital, LLC, previously filed as an exhibit to our Current Report on Form 8-K on July 16, 2010.

Exhibit 10.9 Form of Warrant, previously filed as an exhibit to our Current Report on Form 8-K on July 16, 2010.

SIGNATURE

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 hereunto duly authorized.

Applied DNA Sciences, Inc.
(Registrant)

By: /s/ James A. Hayward
James A. Hayward
Chief Executive Officer

Date: November 26, 2010

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