AMERICAN TECHNOLOGY CORP /DE/
Form 10-K/A
March 24, 2006

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K/A

(Amendment No. 2)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d)

OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended September 30, 2005

Commission File Number 000-24248

AMERICAN TECHNOLOGY CORPORATION

(Exact name of registrant as specified in its charter)

Delaware **(State or other jurisdiction of** **incorporation or organization)**	**87-0361799** **(I.R.S. Employer** **Identification Number)**
15378 Avenue of Science, Suite 100, San Diego, **California** **(Address of principal executive offices)**	**92128** **(Zip Code)**

(858) 676-1112

(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, $.00001 par value

(Title of Class)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ¨ No x

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act. Yes ¨ No x

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 x 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 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. x

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of accelerated filer and large accelerated filer in Rule 12b-2 of the Exchange Act.

Large accelerated filer ¨ Accelerated filer x Non-accelerated filer ¨

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange

Act). Yes ¨ No x

As of March 31, 2005, the aggregate market value of the registrant s common stock held by non-affiliates of the registrant was $142,517,969* based on the closing sale price as reported on the NASDAQ SmallCap Market.

Indicate the number of shares outstanding of each of the issuer s classes of common stock, as of the latest practicable date.

Class	Outstanding at March 20, 2006
Common Stock, $0.00001 par value per share	24,485,215 shares

* Excludes the shares of common stock held by executive officers, directors and stockholders whose ownership exceeds 5% of the common stock outstanding at March 31, 2005. This calculation does not reflect a determination that such persons are affiliates for any other purpose.

EXPLANATORY NOTE

This Amendment No. 2 on Form 10-K/A for American Technology Corporation for the year ended September 30, 2005, is being filed solely (a) to correct an error in Part III, Item 10 concerning the identity of the chair of the audit committee; (b) to correct errors in Part III, Item 11 in the summary compensation table and notes thereto concerning bonuses, commissions and other amounts earned by certain executive officers pursuant to previously-disclosed bonus, commission and other plans for the fiscal years disclosed therein; (c) to include in Part III, Item 13 certain previously-disclosed information concerning participants in prior financing transactions; and (d) to include updated certifications pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. The errors were discovered in the course of preparing our proxy statement for the 2006 annual meeting of stockholders. Our Form 10-K was originally filed on December 29, 2005, and was amended on January 30, 2006. In order to preserve the nature and character of the disclosures set forth in the Form 10-K, as amended, this Amendment No. 2 does not reflect events occurring after the filing of the original Form 10-K on December 29, 2005, with respect to Parts I and II and the Financial Statements and related notes, or events occurring after the filing of Amendment No. 1 on Form 10-K/A on January 30, 2006, with respect to Parts III and IV.

PART III

Item 10. Directors and Executive Officers of the Registrant.

The directors and executive officers, their ages, positions held and duration as director as of January 24, 2006, are as follows:

Name	Age	Position and Offices	Director Since
Elwood G. Norris	67	Chairman and Director	1980
Richard M. Wagner (1)	60	Director	1986
David J. Carter (1)	57	Director	1998
Daniel Hunter (1)	55	Director	2001
John R. Zavoli	46	President, Chief Operating Officer, Interim Chief Financial Officer and Director	2005
Karen Jordan	35	Chief Accounting Officer	n/a
Bruce Gray	50	Vice President, Sales, Commercial Group	n/a
James Croft, III	52	Senior Vice President, Research and Development	n/a
Alan J. Ballard	50	Vice President, Government and Military Division	n/a
Rose Tomich-Litz	47	Vice President, Operations	n/a
David Carnevale	58	Vice President, Marketing	n/a

(1) Member of Audit Committee, Compensation Committee and Nominating and Governance Committee.

The terms of all directors will expire at the next annual meeting of stockholders, or when their successors are elected and qualified. Directors are elected each year, and all directors serve one-year terms. Officers serve at the pleasure of the board of directors. There are no arrangements or understandings between us and any other person pursuant to which he was or is to be selected as a director, executive officer or nominee. We have however entered into employment agreements with our chairman and certain of our named executive officers described in Part III, Item 11 below under the heading Employment Agreements.

Biographical Information

Biographical information on Mr. Norris, Mr. Zavoli, Ms. Jordan, Mr. Croft, Mr. Gray, Mr. Ballard and Ms. Tomich-Litz is contained in Part I, Item 1 above under the heading Executive Officers.

Richard M. Wagner was appointed as a director in 1986 and served as Secretary from February 1994 to March 1999. Since 1986, Mr. Wagner has been President and CEO of Eidon Inc., a San Diego based company involved in the manufacturing and distribution of liquid mineral supplements. Eidon Inc. is the parent company of The Mortgage Company, a residential and commercial mortgage brokerage firm. Mr. Wagner obtained a B.S. in Business in 1968 and an M.S. in Finance in 1974 from the San Diego State University.

David J. Carter was appointed as a director in September 1998. From January 1999 to January 2000, he was Vice President of Copyright Clearance Center, a copyright licensing service. From 1983 until April 1998, he was employed by AT&T, a provider of local, long distance, Internet and transaction-based voice and data services, with his last position as General Manager and Product Development Vice President. He previously served in other positions at AT&T including Business Development Vice President and Consumer Products Marketing Vice President. Prior to his employment with AT&T, he

served as a Marketing Research Consultant and Managing Consultant Marketing and Business Strategy for General Electric Company, a diversified technology, media and financial services company. His career has included technical positions at Temple Barker & Sloane, Inc., a management consulting firm, Decision Research Corp., a marketing research company, and Johnson & Johnson, a manufacturer of health care products and a provider of related services for the consumer, pharmaceutical and medical devices and diagnostics markets. He obtained a B.A. in Mathematics in 1970 and a M.S. in Mathematical Statistics in 1973 from the University of Massachusetts.

Daniel Hunter was appointed as a director in May 2001. Mr. Hunter has been a licensed certified public accountant for the past twenty-five years. He obtained his accounting degree from the University of Utah in 1975. For the past twenty years, Mr. Hunter has operated his own law offices specializing in business and tax law. He obtained his Juris Doctor degree from the University of Seattle in 1978.

David Carnevale was appointed as our vice president, marketing on January 23, 2006. Mr. Carnevale has over 25 years of experience in marketing; and from January 2001 to September 2005, served as vice president of marketing, and most recently, vice president, strategy and corporate development, for Path 1 Network Technologies Inc., a San Diego based provider of IP broadcast video transport and routing systems. Prior to Path 1 Network Technologies, Inc., Mr. Carnevale was an independent marketing consultant and held marketing positions at various software and technology companies. Mr. Carnevale has a Bachelor of Science from Rensselaer Polytechnic Institute and an MBA from the Stanford Graduate School of Business.

Audit Committee and Audit Committee Financial Expert

We have a separately designated standing audit committee established in accordance with Section 3(a)(58)(A) of the Exchange Act. The members of the audit committee are Messrs. Wagner, Carter and Hunter (chair). The board of directors has determined that Daniel Hunter is an audit committee financial expert and independent as defined under applicable SEC and NASDAQ rules. The board s affirmative determination was based, among other things, upon his over 25 years as a certified public accountant.

Section 16(a) Beneficial Ownership Reporting Compliance

Section 16(a) of the Exchange Act requires our officers, directors and persons who own more than 10% of any class of our securities registered under Section 12(g) of the Exchange Act to file reports of ownership and changes in ownership with the SEC. Officers, directors and greater than 10% stockholders are required by SEC regulations to furnish us with copies of all Section 16(a) forms they file.

Based solely on a review of copies of such reports furnished to us and written representations that no other reports were required during the fiscal year ended September 30, 2005, we believe that all persons subject to the reporting requirements pursuant to Section 16(a) filed the required reports on a timely basis with the SEC.

Code of Business Conduct and Ethics

We have adopted a Code of Business Conduct and Ethics, a code of ethics that applies to all employees, including our executive officers. A copy of the Code of Business Conduct and Ethics is posted on our Internet site at www.atcsd.com. In the event we make any amendments to, or grant any waivers of, a provision of the Code of Business Conduct and Ethics that applies to the principal executive officer, principal financial officer, or principal accounting officer that requires disclosure under applicable SEC rules, we intend to disclose such amendment or waiver and the reasons therefor on a Form 8-K or on our next periodic report.

Item 11. Executive Compensation.

Compensation of Directors

On June 28, 2005, upon recommendation of the compensation committee, our board of directors approved a director compensation plan. Under the plan, each of our non-employee directors will be paid a fee of $1,000 per month, to be paid quarterly in arrears, and each of our non-employee directors serving between January 1 and May 31, 2005 was paid a one-time fee of $5,000 in recognition of service during that period.

On June 28, 2005, the compensation committee of our board of directors awarded options to non-employee directors Richard Wagner, David Carter and Daniel Hunter, under our 2005 Equity Incentive Plan. Each option is exercisable for 50,000 shares of our common stock at an exercise price of $5.57 per share, which was the closing price of our common stock reported on the date of grant, has a five year term and vests quarterly over four years, subject to continued service and other conditions.

Summary Compensation Table

Set forth below is information concerning the compensation of each person who served as our Principal Executive Officer and our four most highly compensated executive officers other than the Principal Executive Officer that were serving at September 30, 2005, and an additional individual that served as an executive officer during the fiscal year ended September 30, 2005 but was no longer serving at September 30, 2005 (each a named executive officer). None of our other executive officers serving at the end of the fiscal year ended September 30, 2005 earned more than $100,000 in salary and bonus in such year.

Summary Compensation Table

		Annual Compensation			Long Term Compensation Awards	
Name and Principal Position	**Fiscal Year**	**Salary**	**Bonus**	**Other Annual Compensation**	**Securities Underlying Options (#)**	**All Other Compensation**
Elwood G. Norris,	2005	$ 200,272			70,000	
	2004	$ 200,000				$ 1,385(1)
Chairman	2003	$ 132,308			100,000	$ 2,054(1)
Kalani Jones (2)	2005	$ 199,241			52,500	
	2004	$ 179,808	$ 50,000(3)		125,000	$ 1,636(1)
Former President/Chief	2003	$ 8,077			75,000	
Operating Officer						
Carl Gruenler (4)	2005	$ 187,425(4)	$ 94,465		75,000	$ 25,000(4)
	2004	$ 146,846	$ 61,000(5)		130,000	$ 1,286(1)
Former Vice President of Government and Force	2003	$ 21,260		$ 15,404(6)	20,000	
Protection Systems Group						
Mike Russell (7)	2005	$ 169,000				
	2004	$ 43,882			100,000	$ 480(1)
Former Chief Financial Officer						
James Croft, III	2005	$ 201,383		$ 18,895(8)	10,000	
	2004	$ 126,690		$ 16,246(8)		$ 1,326(1)
Senior Vice President,	2003	$ 122,000		$ 19,200(8)	91,000	
Research and Development						
Bruce Gray	2005	$ 107,692	$ 65,694(9)		100,000	
Vice President,						
Commercial Group						

(1) Represents matching 401(k) contributions.
(2) Mr. Jones resigned from our company effective October 17, 2005. See Employment Agreements below for more information concerning payments made in connection with Mr. Jones separation.
(3) Represents bonus for fiscal 2004 paid in fiscal 2005.
(4) Mr. Gruenler resigned from our company effective May 9, 2005. Salary includes $75,000 in consulting payments earned during fiscal 2005. All Other Compensation consists of a severance payment of $25,000. Excludes $25,000 in consulting payments earned during fiscal 2006. See Employment Agreements below for more information concerning the consulting arrangement with Mr. Gruenler and the payments made in connection with Mr. Gruenler s separation.
(5) Includes commission of $50,000 for fiscal 2004 paid in fiscal 2005.

(6) Represents moving expenses.
(7) Mr. Russell resigned from our company effective December 16, 2005. See Employment Agreements below for more information concerning payments made in connection with Mr. Russell s separation.
(8) Represents royalty payments.
(9) Commissions for fiscal 2005 paid in fiscal 2006.

No named executive officer received any form of non-cash compensation from us in the fiscal years ended September 30, 2005, 2004, or 2003, or currently receives any such compensation, in excess of 10% of the total amount of annual salary and bonus reported for the named executive officer above. No named executive officer received a restricted stock award, a stock appreciation right or a long term incentive plan payout in the fiscal years ended September 30, 2005, 2004 or 2003.

Option Grants

The following table shows further information on grants of stock options in fiscal 2005 to the named executive officers reflected in the Summary Compensation Table.

Option Grants in Last Fiscal Year

	Individual Grants				Potential Realizable Value at Assumed Annual Rates of Stock Price Appreciation for Option Term (6)	
Name	**Number of Shares of Common Stock Underlying Options Granted (1)**	**Percent of Total Options Granted to Employees in Fiscal Year**	**Exercise Price**	**Expiration Date**	**5%**	**10%**
Elwood G. Norris,	70,000	8.3%(1)	$ 8.96	1/27/2010	173,284	$ 382,912
Kalani Jones (2)	52,500	6.2%(1)	$ 8.96	1/27/2010	129,963	$ 287,184
Carl Gruenler (3)	75,000	8.8%(4)	$ 6.70	11/16/2009	138,831	$ 306,781
James Croft, III	10,000	1.2%(4)	$ 6.70	11/16/2009	18,511	$ 40,904
Bruce Gray	100,000	11.8%(5)	$ 8.90	3/22/2010	245,891	$ 543,354

(1) These options were granted under our 2002 Stock Option Plan. These options have an exercise price that was equal to the fair market value on the date of grant. Such options vest as to $^1/16^{th}$ of the shares each quarter following the grant date, subject to continued service to our company.

(2) Mr. Jones resigned from our company effective October 17, 2005.

(3) Mr. Gruenler resigned from our company effective May 9, 2005. Under the terms of a consulting agreement between Mr. Gruenler and our company, Mr. Gruenler continued to serve as a consultant through November 2005, and his options continued to vest through the term of his consulting engagement.

(4) These options were granted under our 2002 Stock Option Plan. These options have an exercise price that was equal to the fair market value on the date of grant. Such options vest as to $^1/4$ of the shares on the first anniversary of the date of grant, and as to $^1/16$th of the shares each quarter thereafter, subject to continued service to our company.

(5) This option was granted as an inducement material to Mr. Gray entering into employment with our company. The option has an exercise price that was equal to the fair market value on the date of grant. The option vests as to $^1/4$ of the shares on the first anniversary of the date of grant, and as to $^1/16$th of the shares each quarter thereafter, subject to continued service with our company.

(6) Potential gains are net of exercise price, but before taxes associated with exercise. These amounts represent certain assumed rates of appreciation only, in accordance with the SEC s rules. Actual gains, if any, on stock option exercises are dependent on the future performance of the common stock, overall market conditions and the option holder s continued employment through the vesting period. The amounts reflected in this table may not necessarily be achieved.

Stock Option Exercises and Holdings

The following table shows the number of unexercised options and the value of options held at the end of the year by each of the named executive officers reflected in the Summary Compensation Table. None of the named executive officers exercised options during fiscal 2005.

Aggregate Option Exercises in Last Fiscal Year and Fiscal Year-End Option Values

Name	Shares Acquired on Exercise	Value Realized	Number of Shares of Common Stock Underlying Unexercised Options Held at Fiscal Year End		Value of Unexercised In-The-Money Options at Fiscal Year End (1)	
			Exercisable	Unexercisable	Exercisable	Unexercisable
Elwood G. Norris			183,750	61,250	$ 291,660	
Kalani Jones			126,352	126,148		
Michael A. Russell			31,250	68,750		
James Croft, III	25,000	$ 152,250	124,000	10,000	$ 217,620	
Bruce Gray				100,000		
Carl Gruenler			89,061	135,939		

(1) Based on the closing price reported on the Nasdaq Capital Market on September 30, 2005 of $5.10 per share.

We do not have any stock appreciation rights plans in effect and we have no long-term incentive plans, as those terms are defined in SEC regulations. During the fiscal year ended September 30, 2005, we did not adjust or amend the exercise price of stock options awarded to the named executive officers. We have no defined benefit or actuarial plans covering any named executive officer.

Employment Arrangements

We entered into the following employment arrangements with each of the named executive officers reflected in the Summary Compensation Table, and each of our current executive officers.

Mr. Elwood G. Norris Effective September 1, 1997, we entered into a three year employment contract with Mr. Norris, for his services as Chief Technology Officer. The three-year term expired on August 31, 2000, but the agreement remains in effect until one party gives thirty days advance notice of termination to the other. Mr. Norris now serves as Chairman under the term of this agreement. The agreement, as amended by the Compensation Committee, provides for a base salary to $16,667 per month. The agreement provides that Mr. Norris will participate in bonus, benefit and other incentives at the discretion of the Board of Directors. Mr. Norris has agreed not to disclose trade secrets and has agreed to assign certain inventions to us during employment. We also provide Mr. Norris with an automobile, the lease payments for which are currently $887.32 per month. We are also obligated to pay Mr. Norris certain royalties. See Item 13 Certain Relationships and Related Transactions below.

Mr. John R. Zavoli On October 17, 2005, we entered into a letter agreement with John R. Zavoli, pursuant to which Mr. Zavoli was appointed as our president and chief operating officer, commencing November 1, 2005. Mr. Zavoli was a director of our company, and was a member of the Audit and Compensation Committees until he resigned the committee appointments in connection with entering into the letter agreement. The letter agreement provided for an annual base salary of $250,000 and eligibility for an annual bonus, as recommended by the compensation committee and approved by the board of directors. In addition, the letter agreement provided that Mr. Zavoli would receive an option to purchase 100,000 shares of our common stock, which option was granted by the Compensation Committee on November 1, 2005. Mr. Zavoli s employment is not for a specified period or term of employment and is terminable at-will by us or by Mr. Zavoli for any reason, with or without notice. Mr. Zavoli will be entitled to severance benefits in the form of up to a maximum of six months of salary and health benefit continuation if we terminate his employment without cause or he resigns for good reason.

Mr. Kalani Jones We entered into a letter agreement dated as of August 28, 2003, as amended on October 20, 2003, under which Mr. Jones was employed as our Senior Vice President of Operations. Mr. Jones was later promoted to President and Chief Operating Officer. The letter agreement provided for an annual base salary of $140,000, a 30% annual performance bonus to be determined by the Compensation Committee and the Board of Directors, and the grant of an option to purchase 75,000 shares of our common stock, which option vested quarterly over a two year period beginning six months after the date of employment. Mr. Jones subsequently received additional option grants. Mr. Jones s employment was terminable at-will by us or Mr. Jones for any reason, with or without notice. On October 17, 2005, Mr. Jones s employment arrangement with the company terminated. Mr. Jones annual base salary at the time of resignation was $220,000, and he was entitled to an annual performance bonus of up to 50% of his base salary, as determined by the Compensation Committee. On October 20, 2005, we entered into a separation and release agreement with Mr. Jones. The agreement provides for our one-time payment of $82,500 to Mr. Jones and our payment of health benefit premiums on Mr. Jones s behalf for a period not to extend beyond February 28, 2006. We also agreed to extend until February 15, 2006 the period of time for which the vested portion of stock options held by Mr. Jones may be exercised. In addition, the separation and release agreement contains Mr. Jones s general release of all claims against our company.

Mr. Carl Gruenler We entered into a letter agreement with Mr. Gruenler, which was amended on July 30, 2003, under which Mr. Gruenler was employed as our Vice President of Military Operations and later Vice President of Government and Force Protection Systems Group. The letter agreement provided for an annual base salary of $110,000, and an annual performance bonus of up to 10% of base salary to be determined by the Compensation Committee and our board of directors. Mr. Gruenler s employment was terminable at-will by us or by Mr. Gruenler for any reason, with or without notice. Mr. Gruenler resigned his employment effective May 9, 2005. Mr. Gruenler s annual base salary at the time of resignation was $250,000, and he participated in our broad-based commission plan in lieu of the annual performance bonus contemplated by his letter agreement.

On June 15, 2005, we entered into a separation and release agreement with Mr. Gruenler. The agreement provided for a severance payment of $25,000 to be made to Mr. Gruenler, and contained Mr. Gruenler s general release of all claims against our company. In connection with the separation and release agreement, we also executed a consulting agreement documenting our consulting arrangement with Mr. Gruenler that commenced following his departure. The term of the consulting agreement was six months commencing May 10, 2005. During the term of the consulting agreement, Mr. Gruenler agreed to provide consulting services related to our Government and Force Protection business to the extent requested by our company. For these services, Mr. Gruenler received compensation of $20,000 per month for the first three months, $15,000 per month for the next two months and $10,000 for the final month. Mr. Gruenler also agreed that during the term of the consulting agreement, he would not provide services for any company that competes directly or indirectly with the business of our Government and Force Protection Systems Group. All stock options that were previously granted to Mr. Gruenler continued to vest over the term of the consulting agreement, and remained exercisable until thirty days after the termination of the consulting relationship.

Ms. Karen Jordan - On December 16, 2005, our board of directors approved the appointment of Karen Jordan as our chief accounting officer. Ms. Jordan entered into a letter agreement with our company dated October 26, 2005, and joined our company in November 2005, as director of finance. Ms. Jordan s annual salary is $140,000 and she participates in bonus, benefit and other incentives at the discretion of the Compensation Committee. Ms Jordan s employment is not for a specified period or term of employment and is terminable at-will by us or by Ms. Jordan for any reason, with or without notice.

Mr. James Croft, III - On August 17, 2005, our board of directors approved the appointment of Mr. James Croft, III as our Chief Technology Officer and Vice President of Advanced Development. Mr. Croft has served as our Vice President of Research and Development since February 28, 2000, and, prior to that, as our Vice President of Engineering from September 15, 1997. Mr. Croft is employed pursuant to the terms of an employment agreement dated February 28, 2000, which terms have been orally modified. Under the terms as modified, Mr. Croft s annual salary is $165,000, and he participates in bonus, benefit and other incentives at the discretion of the Compensation Committee. We presently exclusively license two pre-employment inventions from Mr. Croft through March 2008. We are not currently marketing products using these inventions, and we are not currently paying royalties to Mr. Croft for these inventions. We plan to negotiate further revisions to our agreement with Mr. Croft, including our right to continue the license beyond March 2008. The initial term of the employment agreement dated February 28, 2000 has expired, and as a result, either we or Mr. Croft may terminate his employment for any reason upon thirty days advance notice.

Mr. Bruce Gray - We entered into a letter agreement with Mr. Bruce Gray, under which Mr. Gray was employed as our Vice President of the Commercial Products Group effective March 21, 2005. Mr. Gray currently serves as our Vice President, Sales, Commercial Group. The letter agreement provides for an annual base salary of $200,000 and an annual sales commission, payable on a quarterly basis, based on revenues and billings. Mr. Gray s employment is terminable at-will by us or by Mr. Gray for any reason, with or without notice.

Mr. Alan J. Ballard - On November 17, 2005, our board of directors approved the appointment of Mr. Alan J. Ballard as our Vice President, Government and Military Division. Mr. Ballard joined our company in January 2004 and has held various positions in our Government Group. Mr. Ballard s annual salary is $145,000, and he participates in bonus, benefit and other incentives at the discretion of the Compensation Committee. Mr. Ballard s employment is terminable at-will by us or by Mr. Ballard for any reason, with or without notice.

Ms. Rose Tomich-Litz - On November 30, 2005, our board of directors approved the appointment of Ms. Rose Tomich-Litz as our Vice President, Operations. Ms. Tomich-Litz s annual salary is $157,500, and she participates in bonus, benefit and other incentives at the discretion of the Compensation Committee. Ms. Tomich-Litz s employment is terminable at-will by us or by Ms. Tomich-Litz for any reason, with or without notice.

Mr. David Carnevale - On January 23, 2006, our board of directors approved the appointment of Mr. David A. Carnevale as our vice president, marketing. Mr. Carnevale s employment is terminable at-will by us or by Mr. Carnevale for any reason, with or without notice. Mr. Carnevale s annual salary is $180,000, and he participates in bonus, benefit and other incentives at the discretion of the Compensation Committee. On January 23, 2006, we granted Mr. Carnevale a stock option exercisable for 100,000 shares of our common stock pursuant to our 2005 Equity Incentive Plan. The option vests quarterly over four years and has a five-year term, subject to continued service and other conditions.

Compensation Committee Interlocks and Insider Participation

Messrs. Wagner, Hunter and Carter served on the Compensation Committee during fiscal 2005. Mr. Wagner served as our Secretary from February 1994 to March 1999. No executive officer of our company (1) served as a member of the compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) of another entity, one of whose executive officers served on our company s Compensation Committee, (2) served as a director of another entity, one of whose executive officers served on our company s Compensation Committee, or (3) served as a member of the compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) of another entity, one of whose executive officers served as a director of our company.

Item 13. Certain Relationships and Related Transactions.

Under the terms of an Assignment of Technology Agreement dated March 2, 1993 and an Addendum Agreement dated December 2, 1996 we are obligated to pay Elwood G. Norris, our Chairman, a 2% royalty on net sales from certain of our technologies, of which only HSS is a current offering of our company. The royalty obligation continues until at least March 1, 2007, and for any longer period during which we sell products or license technologies subject to any patent assigned to us by Mr. Norris. No royalties were paid or recorded under this agreement in the fiscal years ended September 30, 2005, 2004, or 2003, as these royalties were immaterial and were waived by Mr. Norris. We may owe royalties in future periods based on actual sales or technology revenues.

Mark Norris, the son of Elwood G. Norris, is a full-time non-executive employee of our company. In his role as a Mechanical Engineer, Mark Norris was paid $100,618 in salary for the fiscal year ended September 30, 2005. No other family member of any executive officer, director or 5% stockholder received compensation of more than $60,000 during the year ended September 30, 2005.

In December 2004, a family trust affiliated with Mr. Elwood G. Norris purchased from our company an unsecured subordinated promissory note in the principal amount of $500,000. Such purchase was in connection with a private offering of an aggregate of $2,000,000 of such notes. The notes are due December 31, 2006, and interest accrues at the rate of 8% per year and is due and payable quarterly in arrears. We were required to apply 40% of the net proceeds of any future equity financing to prepay these notes. In connection with the issuance of these notes, each purchaser, including Mr. Norris trust, was granted a warrant to purchase 7,500 shares of our common stock for each $100,000 of notes purchased (prorated for amounts less than $100,000), exercisable until December 31, 2009. The exercise price of the warrants was $9.28 per share for purchasers who were directors, officers, employees or consultants of our company, or affiliates of such persons, and $8.60 per share for other purchasers. Mr. Norris trust therefore received a warrant exercisable for 37,500 shares with an exercise price of $9.28 per share.

Canusa Trading Ltd., a significant owner of our then outstanding Series E Preferred Stock, also purchased an unsecured subordinated promissory note from our company in the principal amount of $300,000 in the December 2004 note and warrant financing, and received a warrant to purchase 22,500 shares at an exercise price of $8.60 per share. All shares of Series E Preferred Stock have since been converted into common stock. See below for more information on this conversion.

All of the December 2004 notes were repaid in accordance with their terms in July 2005 in connection with the equity financing that closed at that time.

Effective as of January 18, 2005, we gave notice to all holders of Series D Preferred Stock that we had elected to convert the shares of Series D Preferred Stock to common stock, such that all 50,000 issued and outstanding shares of Series D Preferred Stock converted into an aggregate of 129,259 shares of common stock. Certain significant owners of our then outstanding shares of Series D Preferred Stock received shares of common stock as follows: Ehrens Family Trust (5,000 shares of Series D Preferred Stock converted into 12,926 shares of common stock), Granite Capital LP (35,263 shares of Series D Preferred Stock converted into 91,161 shares of common stock), and Granite Capital II LP (4,737 shares of Series D Preferred Stock converted into 12,246 shares of common stock).

On January 18, 2005, we gave notice to all holders of Series E Preferred Stock that we had elected to convert the shares of Series E Preferred Stock to common stock. The notice of conversion for the Series E Preferred Stock was effective on February 1, 2005, and all 233,250 issued and outstanding shares of Series E Preferred Stock converted into an aggregate of 801,306 shares of common stock. Certain significant owners of our outstanding shares of Series E Preferred Stock received shares of common stock as follows: Granite Capital LP (22,500 shares of Series E Preferred Stock converted into 77,296 shares of common stock), Granite Capital II LP (2,500 shares of Series E Preferred Stock converted into 8,589 shares of common stock), Canusa Trading Ltd. (50,000 shares of Series E Preferred Stock converted into 171,769 shares of common stock), K. Tucker Anderson (25,000 shares of Series E Preferred Stock converted into 85,885 shares of common stock), Leonard M. Teninbaum Keogh Account (42,500 shares of Series E Preferred Stock converted into 146,004 shares of common stock).

PART IV

Item 15. Exhibits and Financial Statement Schedules.

Financial Statements:

Previously filed

Exhibit Index:

3. Articles of Incorporation and Bylaws

3.1 Certificate of Incorporation of American Technology Corporation (Delaware) dated March 1, 1992. Incorporated by reference to Exhibit 2.1 on Form 10-SB effective August 1, 1994.

3.1.1 Amendment to Certificate of Incorporation of American Technology Corporation dated March 24, 1997 and filed with Delaware on April 22, 1997. Incorporated by reference to Exhibit 3.1.1 on Form 10-QSB for the quarter ended March 31, 1997, dated May 13, 1997.

3.1.2 Corrected Certificate of Designations of Series A Convertible Preferred Stock dated and filed with Delaware on August 25, 1997. Incorporated by reference to Exhibit 3.1.3 on Form 8-K dated August 29, 1997.

3.1.3 Corrected Certificate of Designations of Series B Convertible Preferred Stock filed with Delaware on December 23, 1998. Incorporated by reference to Exhibit 3.1.4 on Form 10-KSB for the year ended September 30, 1998, dated December 29, 1998.

3.1.4 Corrected Certificate of Designation of Series C Preferred Stock filed with Delaware on April 19, 2000. Incorporated by reference to Exhibit 3.1.5 on Form 8-K dated April 19, 2000.

3.1.5 Certificate of Designation of Series D Preferred Stock filed with Delaware on May 3, 2002. Incorporated by reference to Exhibit 3.1 on Form 10-Q for the quarter ended March 31, 2002, dated May 15, 2002.

3.1.6 Certificate of Amendment to Certificate of Incorporation filed with Delaware on September 26, 2002. Incorporated by reference to Exhibit 3.1.6 on Form 10-K for the year ended September 30, 2002, dated December 23, 2002.

3.1.7 Certificate of Designation of Series E Preferred Stock filed with Delaware on February 28, 2003. Incorporated by reference to Exhibit 4.2 on Form 8-K dated March 6, 2003.

3.2 Amended and Restated Bylaws of American Technology Corporation. Incorporated by reference to Exhibit 3.1 on Form 10-Q for the quarter ended March 31, 2004, dated May 5, 2004.

3.3 Restated Bylaws of American Technology Corporation. Incorporated by reference to Exhibit 3.1 on Form 10-Q for the quarter ended December 31, 2004, dated February 11, 2005.

10. Material Contracts

10.1 Royalty Agreement between ATC and Elwood G. Norris dated September 3, 1985. Incorporated by reference to Exhibit 6.2 on Form 10-SB effective August 1, 1994.+

10.2 Assignment of Technology Agreement between ATC and Elwood G. Norris dated March 2, 1992. Incorporated by reference to Exhibit 6.3 on Form 10-SB effective August 1, 1994.+

10.2.1 Addendum Agreement to Assignment of Technology Agreement between ATC and Elwood G. Norris dated December 2, 1996. Incorporated by reference to Exhibit 10.3.1 on Form 10-KSB for year ended September 30, 1996, dated December 13, 1996.+

10.3 Amended and Restated Sublease Agreement between ATC and Smiths Industries Aerospace & Defense Systems, Inc. as amended, dated September 1, 2000. Incorporated by reference to Exhibit 10.6.1 on Form 10-K for the year ended September 30, 2000, dated October 29, 2000.

10.3.1 First Amendment to Amended and Restated Sublease Agreement, dated January 1, 2004. Incorporated by reference to Exhibit 10.1 on Form 10-Q for the quarter ended March 31, 2004, dated May 5, 2004.

10.3.2 Attornment Agreement between ATC and LBA Realty Fund-Holding Co. I, LLC dated August 1, 2005.*

10.3.3 First Amendment to Attornment Agreement between ATC and LBA Realty Fund-Holding Co. I, LLC dated November 15, 2005.*

10.4 Employment Agreement dated as of September 1, 1997 between ATC and Elwood G. Norris. Incorporated by reference to Exhibit 10.16 on Form 10-KSB for year ended September 30, 1997, dated December 1, 1997.+

10.5	1997 Stock Option Plan as adopted on January 23, 1998 Incorporated by reference to Exhibit 10.1 on Form S-8 dated July 27, 1998.+
10.5.1	Form of Incentive Stock Option Agreement under 1997 Stock Option Plan. Incorporated by reference to Exhibit 10.5.1 on Form 10-K for the year ended September 30, 2004, dated December 28, 2004.+
10.5.2	Form of Non-Statutory Stock Option Agreement under 1997 Stock Option Plan. Incorporated by reference to Exhibit 10.5.2 on Form 10-K for the year ended September 30, 2004, dated December 28, 2004.+
10.6	2002 Stock Option Plan. Incorporated by reference to Exhibit 99.1 on Form S-8 dated November 18, 2002.+
10.6.1	Form of Stock Option Grant Notice and Stock Option Agreement under 2002 Stock Option Plan. Incorporated by reference to Exhibit 10.6.1 on Form 10-K for the year ended September 30, 2004, dated December 28, 2004.+
10.7	Form of Stock Purchase Warrant exercisable until September 30, 2006 granted to accredited investors for an aggregate of 1,012,500 common shares (individual warrants differ as to holder, number of shares and issuance date). Incorporated by reference to Exhibit 4.12 on Form 8-K dated October 12, 2001.
10.8	Form of Stock Purchase Warrant exercisable until March 31, 2007 granted to investors for an aggregate of 517,880 common shares (individual warrants differ as to holder, number of shares and issuance date). Incorporated by reference to Exhibit 10.2 on Form 10-Q for the quarter ended March 31, 2002, dated May 15, 2002.
10.9	Form of Stock Purchase Warrant exercisable until December 31, 2007 granted to accredited investors for an aggregate of 514,875 common shares (individual warrants differ as to holder, number of shares and issuance date). Incorporated by reference to Exhibit 4.3 on Form 8-K dated March 6, 2003.
10.10	Securities Purchase Agreement dated July 11, 2003. Incorporated by reference to Exhibit 4.1 on Form 8-K dated July 17, 2003.
10.11	Registration Rights Agreement dated July 11, 2003. Incorporated by reference to Exhibit 4.2 on Form 8-K dated July 17, 2003.
10.12	Form of Common Stock Warrant exercisable until July 10, 2007 granted to accredited investors for an aggregate of 454,547 common shares (individual warrants differ as to holder, number of shares and issuance date). Incorporated by reference to Exhibit 4.3 on Form 8-K dated July 17, 2003.
10.13	Employment Agreement of Kalani Jones dated August 28, 2003, as amended. Incorporated by reference to Exhibit 10.29 on Form 10-K for the year ended September 30, 2003, dated December 29, 2003.+
10.13.1	Separation and Release Agreement with Kalani Jones dated October 20, 2005.+*

10.14	Employment Agreement of Carl Gruenler, as amended. Incorporated by reference to Exhibit 10.30 on Form 10-K for the year ended September 30, 2003, dated December 29, 2003.+
10.14.1	Separation and Release Agreement with Carl Gruenler dated June 15, 2005. Incorporated by reference to Exhibit 99.1 on Form 8-K filed June 17, 2005.+
10.14.2	Consulting Agreement with Carl Gruenler dated June 15, 2005. Incorporated by reference to Exhibit 99.2 on Form 8-K filed June 17, 2005.+
10.15	Form of Inducement Grant Notice and Inducement Stock Option Agreement. Incorporated by reference to Exhibit 4.1 on Form 8-K dated September 28, 2004.+
10.16	Table of Inducement Grants.+*
10.17	Form of Special Stock Option. Incorporated by reference to Exhibit 99.2 on Form S-8 dated November 18, 2002.+
10.18	Employment Agreement of Michael Russell. Incorporated by reference to Exhibit 10.1 on Form 10-Q for the quarter ended June 30, 2004, dated August 4, 2004.+
10.19	Inducement Grant Notice and Inducement Stock Option Agreement of Michael Russell. Incorporated by reference to Exhibit 10.28 on Form 10-K for the year ended September 30, 2004, dated December 28, 2004.+
10.20	Employment Agreement of Joseph A. Zerucha. Incorporated by reference to Exhibit 10.2 on Form 10-Q for the quarter ended December 31, 2003, dated February 12, 2004.+
10.21	Separation Agreement of Joseph A. Zerucha. Incorporated by reference to Exhibit 10.2 on Form 10-Q for the Form 10-Q for the quarter ended June 30, 2004, dated August 4, 2004.+
10.22	Employment Agreement of Bruce Ehlers. Incorporated by reference to Exhibit 10.1 on Form 10-Q for the quarter ended December 31, 2003, dated February 12, 2004.+