

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

FORM 10-K

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

FOR THE FISCAL YEAR ENDED DECEMBER 31, 2020

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
FOR THE TRANSITION PERIOD FROM _____ TO _____.

Commission File Number 001-37721



DELAWARE
(State or other jurisdiction of
incorporation organization)

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

767 3RD AVENUE, SUITE 602
NEW YORK, NY
(Address of principal executive offices)

10017
(Zip Code)

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

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

<u>Title of Each Class</u>	<u>Trading Symbol(s)</u>	<u>Name of Each Exchange on Which Registered</u>
Common Stock, \$0.001 par value	ACTG	The NASDAQ Stock Market, LLC

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

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

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

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 filing requirements for the past 90 days. Yes No

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

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

Large accelerated filer
Non-accelerated filer

Accelerated filer
Smaller reporting company
Emerging growth company

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

Indicate by check mark whether the company has filed an attestation report regarding management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act by the registered public accountants that audited the company's financial statements. Yes No

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

The aggregate market value of the registrant's voting and non-voting common stock held by non-affiliates of the registrant on June 30, 2020, the last business day of the registrant's most recently completed second fiscal quarter, computed by reference to the last sale price of the registrant's common stock as reported by The Nasdaq Global Select Market on such date, was approximately \$199,263,000. This computation assumes that all executive officers and directors are affiliates of the registrant. Such assumption should not be deemed conclusive for any other purpose.

As of March 24, 2021, 49,279,453 shares of common stock were issued and outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

In accordance with General Instruction G(3) to Form 10-K, portions of the registrant's Definitive Proxy Statement on Schedule 14A for its Annual Meeting of Stockholders to be filed with the Commission within 120 days after the close of the fiscal year covered by this Annual Report on Form 10-K are incorporated by reference into Part III of this Annual Report on Form 10-K. Only those portions of the proxy statement that are specifically incorporated by reference herein shall constitute a part of this Annual Report on Form 10-K.

ACACIA RESEARCH CORPORATION
ANNUAL REPORT ON FORM 10-K
FISCAL YEAR ENDED DECEMBER 31, 2020
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PART I

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

As used in this Annual Report on Form 10-K, or the annual report, “we,” “us,” and “our” refer to Acacia Research Corporation and/or its wholly and majority-owned operating subsidiaries. All patent portfolio investments, development, licensing and enforcement activities are conducted solely by certain of our wholly owned operating subsidiaries.

This annual report, contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act, which include, without limitation, statements about our future business operations and results, our strategies and competition, and other forward-looking statements included in this annual report. Such statements may be identified by the use of forward-looking terminology such as “may,” “will,” “expect,” “believe,” “estimate,” “anticipate,” “intend,” “continue,” or similar terms, variations of such terms or the negative of such terms. Such statements are based on management’s current expectations and are subject to a number of risks and uncertainties, which could cause actual results to differ materially from those described in the forward-looking statements. Such statements address future events and conditions concerning earnings, capital expenditures, litigation, competition, regulatory matters, stock price volatility, liquidity and capital resources, accounting matters and investments. Actual results in each case could differ materially from those anticipated in such statements by reason of factors such as future economic conditions, legislative, regulatory and competitive developments in markets in which we and our subsidiaries operate, and other circumstances affecting anticipated revenues and costs, as more fully disclosed in our discussion of “Risk Factors” in Item 1A of Part I of this annual report. We expressly disclaim any obligation or undertaking to release publicly any updates or revisions to any forward-looking statements contained herein to reflect any change in our expectations with regard thereto or any change in events, conditions or circumstances on which any such statement is based. Additional factors that could cause such results to differ materially from those described in the forward-looking statements are set forth in connection with the forward-looking statements.

ITEM 1. BUSINESS

General

Acacia Research Corporation (the “Company”, “we”, or “us”) acquires businesses and operating assets that we believe to be undervalued and where we believe we can leverage our resources and skill sets to realize and unlock value. We leverage our (i) access to flexible capital that can be deployed unconditionally, (ii) expertise in corporate governance and operational restructuring, (iii) willingness to invest in out of favor industries and businesses that suffer from a complexity discount and untangle complex, multi-factor situations, and (iv) expertise and relationships in certain sectors, to complete strategic acquisitions of businesses, divisions, and/or assets with a focus on mature technology, healthcare, industrial and certain financial segments. We seek to identify opportunities where we believe we are advantaged buyers, where we can avoid structured sale processes and create the opportunity to purchase businesses, divisions and/or assets of companies at an attractive price due to our unique capabilities, relationships, or expertise, or where we believe the target would be worth more to us than to other buyers.

We operate our business based on three key principles of People, Process and Performance and have built a management team with identified expertise in Research, Execution and Operation of our targeted acquisitions.

We utilized these skill sets and resources to acquire a portfolio of equity securities of life science businesses (the “Portfolio Companies”) in June 2020. As of December 31, 2020, we have monetized a portion of the portfolio while retaining an interest in a number of operating businesses, including a controlling interest in one of the companies in the portfolio. Further, some of the businesses in which we continue to hold an interest generate revenues through the receipt of royalties.

We also operate our legacy business of investing in intellectual property, or IP, and related absolute return assets and engaging in the licensing and enforcement of patented technologies. We partner with inventors and patent owners, from small entities to large corporations, applying our legal and technology expertise to patent assets to unlock the financial value in their patented inventions. We are an intermediary in the patent marketplace, bridging the gap between invention and application, and facilitating efficiency in connection with the monetization of patent assets.

We generate revenues and related cash flows from the granting of IP rights for the use of patented technologies that our operating subsidiaries control or own. We assist patent owners with the prosecution and development of their patent portfolios, the protection of their patented inventions from unauthorized use, the generation of licensing revenue from users of their patented technologies and, where necessary, with the enforcement against unauthorized users of their patented technologies through the filing of patent infringement litigation. Currently, on a consolidated basis, our operating subsidiaries own or control the rights to multiple patent portfolios, which include U.S. patents and certain foreign counterparts, covering technologies used in a variety of industries.

We have established a proven track record of licensing and enforcement success with over 1,590 license agreements executed to date, across nearly 200 patent portfolio licensing and enforcement programs. To date, we have generated gross licensing revenue of over \$1.6 billion, and have returned more than \$797 million to our patent partners.

For further details of the development of our business, refer to our [Annual Report on Form 10-K](#) for the year ended December 31, 2019, which is incorporated herein by reference.

Corporate Information

We were originally incorporated in California in January 1993 and reincorporated in Delaware in December 1999. Our website address is www.acaciaresearch.com. Reference in this annual report to this website address does not constitute incorporation by reference of the information contained on or accessed through our website and references to our website address in this annual report are inactive textual references only. We make our filings with the Securities and Exchange Commission, or the SEC, including our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, other reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act, and amendments to the foregoing reports, available free of charge on or through our website as soon as reasonably practicable after we file these reports with, or furnish such reports to, the SEC. In addition, we post the following information on our website:

- our code of conduct for chief executive officer and other senior officers;
- our code of conduct for employees and directors and our fraud policy;
- our insider trading policy; and
- charters for our audit committee, nominating and corporate governance committee and compensation committee.

Also, the SEC maintains an Internet website that contains reports, proxy and information statements, and other information regarding issuers, including us, that file electronically with the SEC. The public can obtain any documents that we file with the SEC at <http://www.sec.gov>.

Patent Licensing and Enforcement Business

We are a principal in the licensing and enforcement of patent portfolios, with our operating subsidiaries obtaining the rights in the patent portfolio, or purchasing the patent portfolio outright. We assume all responsibility for advancing operational expenses while pursuing a patent licensing and enforcement program, and when applicable, share net licensing revenue with our patent partners as that program matures, on a pre-arranged and negotiated basis. We may also provide upfront capital to patent owners as an advance against future licensing revenue.

We have the flexibility to structure arrangements to address the needs and specific sets of circumstances presented by each of our unique patent partners, ranging from outright purchases to various forms of partnering arrangements.

Generally, we maintain a substantial preferred rate of return until all deployed capital and advanced operational costs are recovered by us. After recovery of these costs, the net profit revenue share with patent partner commences, if applicable.

We engage highly competent and experienced patent lawyers to prosecute our patent portfolio litigation. It is imperative for us to be persistent and patient throughout the litigation process as it typically takes 18-36 months from the filing date of a lawsuit to yield a license agreement from a potential licensee. Often, it takes longer to secure a final court judgment.

Patent license negotiations and litigation initiated by our operating subsidiaries usually lead to serious and thoughtful discussions with the unauthorized users of the patented inventions. The result can be quite favorable with the user being granted rights under the patents for the patented invention in its products and services in exchange for financial remuneration.

In fiscal year 2019 and 2020, the Company experienced a number of changes in its outlook and leadership. With new management in place, the focus was on capturing the value of remaining portfolio assets while building the new business pipeline. In addition, we began to pursue other business opportunities which complement our legacy licensing and enforcement business and leverage our IP expertise.

Patented Technologies

Currently, on a consolidated basis, our operating subsidiaries own or control the rights to patent portfolios covering technologies used in a number of industries, including: transportation and automotive, telecommunications, semiconductor, consumer electronics, energy efficiency, wireless, video/imaging and medical devices.

Refer to Item 7. "Management's Discussion and Analysis of Financial Condition and Results of Operations" for a summary of patent portfolios generating revenues for the applicable periods presented.

Competition

We face intense competition in identifying, evaluating and executing strategic acquisitions from other entities having a business objective similar to ours, including private equity groups and operating businesses seeking strategic acquisitions. We compete with financial firms, corporate buyers and others investing in strategic opportunities and acquiring IP. Many of these competitors may have greater financial and human capital resources than we have. We may find more companies entering the market for similar technology opportunities, which may reduce our market share in one or more technology industries that we currently or in the future may rely upon to generate future revenue.

Employees

As of December 31, 2020, on a consolidated basis, we had 20 full-time employees. Neither we, nor any of our subsidiaries, are a party to any collective bargaining agreement. We believe we have good relations with our employees.

ITEM 1A. RISK FACTORS

An investment in our common stock involves risks. You should carefully consider the risks described below, together with all of the other information included in this annual report, as well as in our other filings with the SEC, in evaluating our business. The risks described below are not the only risks we face. Additional risks that we do not yet know of or that we currently believe are immaterial may also impair our business operations. If any of the following risks actually occur, our business, financial condition and results of operations could be materially adversely affected, and the trading price of our common stock could decline significantly. Certain statements below may be considered forward-looking statements. For additional information, see “Cautionary Note Regarding Forward-Looking Statements.”

Risks Related to Our Business

We have a history of losses and may incur additional losses in the future.

We reported a net income of \$113.4 million (includes \$176.2 million of unrealized gain from trading securities and investment securities and \$5.5 million unrealized equity investment gains), and a net loss of \$17.1 million (including \$9.9 million of unrealized equity investment gains) for the years ended December 31, 2020 and 2019, respectively, and on a cumulative basis, we have sustained substantial losses since our inception. As of December 31, 2020, our accumulated deficit was \$326.7 million. As of December 31, 2020, we had approximately \$274.6 million in cash and cash equivalents and trading securities and working capital of \$332.9 million. Although we believe that our current cash and cash equivalents and investments will be sufficient to finance our anticipated capital and operating requirements for at least the next twelve months, we expect to continue incurring significant legal, general and administrative expenses in connection with our operations. As a result, we anticipate that we may incur losses in the future. Additional increases in our expenses without commensurate increases in revenues could significantly increase our operating losses. Any additional operating losses may have a material adverse effect on our stockholders’ equity and overall financial condition.

Recent U.S. tax legislation may adversely affect our financial condition, results of operations and cash flows, including the ability to use net operating losses and certain other tax attributes.

Our ability to use our federal and state net operating losses to offset potential future taxable income and related income taxes that would otherwise be due is dependent upon our generation of future taxable income before the expiration dates of the net operating losses, and we cannot predict with certainty when, or whether, we will generate sufficient taxable income to use all or any portion of our net operating losses. In addition, utilization of net operating losses to offset potential future taxable income and related income taxes that would otherwise be due is subject to annual limitations under the “ownership change” provisions of Sections 382 and 383 of the Internal Revenue Code of 1986, as amended, or the Code, and similar state provisions, which may result in the expiration of net operating losses before future utilization. In general, under the Code, if a corporation undergoes an “ownership change,” generally defined as a greater than 50% change (by value) in its equity ownership over a three-year period, the corporation’s ability to use its pre-change net operating losses and other pre-change tax attributes (such as research and development credit carryforwards) to offset its post-change taxable income or taxes may be limited. Changes in our stock ownership, some of which may be outside of our control, could in the future result in an ownership change. Although we have adopted a Tax Benefits Preservation Plan and a provision in our certificate of incorporation, each of which are designed to discourage investors from acquiring ownership of our common stock in a manner that could trigger an ownership change, and we have completed studies to provide reasonable assurance that an ownership change limitation would not apply, we cannot be certain that a taxing authority would reach the same conclusion. If, after a review or audit, an ownership change limitation were to apply, utilization of our domestic net operating losses and tax credit carryforwards could be limited in future periods and a portion of the carryforwards could expire before being available to reduce future income tax liabilities.

If we encounter unforeseen difficulties with our business or operations in the future that require us to obtain additional working capital, and we cannot obtain additional working capital on favorable terms, or at all, our business may suffer.

Our consolidated cash and cash equivalents and trading securities totaled \$274.6 million and \$168.3 million at December 31, 2020 and 2019, respectively. To date, we have relied primarily upon net cash flows from our operations and from the public and private sale of equity securities to generate the working capital needed to finance our operations. We may encounter unforeseen difficulties with our business or operations in the future that may deplete our capital resources more rapidly than anticipated. As a result, we may be required to obtain additional working capital in the future through bank credit facilities, public or private debt or equity financings, or otherwise. If we are required to raise additional working capital in the future, such financing may be unavailable to us on favorable terms, if at all, or may be dilutive to our existing stockholders. If we fail to obtain additional working capital, as and when needed, such failure could have a material adverse impact on our business, results of operations and financial condition.

Failure to effectively manage our operational changes could strain our managerial, operational and financial resources and could adversely affect our business and operating results.

Operational changes primarily relate to changes in our board of directors and senior management. During 2018, we announced various changes to our board of directors and senior management, including a reconstituted board of directors and the terminations of our President, our Chief Financial Officer, Senior Vice President of Finance and Treasurer and our Executive Vice President, General Counsel and Secretary. We also announced in 2018 the appointment of our new Chief Intellectual Property Officer Marc W. Booth. In 2019 we appointed Clifford Press as our new Chief Executive Officer, and Alfred V. Tobia, Jr. as our new President and Chief Investment Officer. In 2020 we appointed Richard Rosenstein as our new Chief Financial Officer. Changes in leadership and key management positions have inherent risks, and there are no assurances that any of our recent changes will not affect our financial condition.

If we fail to manage our operational changes effectively or to develop, expand or otherwise modify our managerial, operational and financial resources and systems, our business and financial results will be materially harmed.

Patent portfolio investments may present risks, and we may be unable to achieve the financial or other goals intended at the time of any potential investment.

Our licensing and enforcement business has depended, in part, on our ability to invest in patented technologies, patent portfolios, or companies holding such patented technologies and patent portfolios. Accordingly, historically we have engaged in patent portfolio investments in an effort to expand our patent portfolio assets. Such investments and potential investments are subject to numerous risks, including the following:

- our inability to enter into a definitive agreement with respect to any potential patent portfolio investment, or if we are able to enter into such agreement, our inability to consummate the potential investment transaction;
- difficulty integrating the operations, technology and personnel of the acquired entity;
- our inability to achieve the anticipated financial and other benefits of the specific patent portfolio investment;
- our inability to retain key personnel from the acquired company, if necessary;
- difficulty in maintaining controls, procedures and policies during the transition and integration process;
- diversion of our management's attention from other business concerns; and
- failure of our due diligence process to identify significant issues, including issues with respect to patented technologies and patent portfolios, and other legal and financial contingencies.

If we are unable to manage these risks effectively as part of any patent portfolio investment, our business could be adversely affected.

Our revenues are unpredictable, and this may harm our financial condition.

Due to the nature of our licensing business and uncertainties regarding the amount and timing of the receipt of license and other fees from potential infringers, stemming primarily from uncertainties regarding the outcome of enforcement actions, rates of adoption of our patented technologies, the growth rates of our existing licensees and certain other factors, our revenues may vary significantly from quarter to quarter and period to period, which could make our business difficult to manage, adversely affect our business and operating results, cause our quarterly and periodic results to fall below market expectations and adversely affect the market price of our common stock.

Our operating subsidiaries depend upon relationships with others to provide technology-based opportunities that can develop into profitable royalty-bearing licenses, and if they are unable to maintain and generate new relationships, then they may not be able to sustain existing levels of revenue or increase revenue.

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

Our current or future relationships may not provide the volume or quality of technologies necessary to sustain our licensing, enforcement and overall business. If we are unable to maintain current relationships and sources of technology or to secure new relationships and sources of technology, such inability may have a material adverse effect on our revenues, operating results, financial condition and ability to maintain our licensing and enforcement business.

The success of our operating subsidiaries depends in part upon their ability to retain the best legal counsel to represent them in patent enforcement litigation in order to achieve favorable outcomes from such litigation. The outcome of such litigation is uncertain, and any unfavorable outcomes may harm our financial condition.

The success of our licensing business depends upon our operating subsidiaries' ability to retain the best legal counsel to prosecute patent infringement litigation. As our operations evolve and industry conditions increase in complexity, it will become more difficult to find the best legal counsel to handle all of our cases. This is due in part to many of the best law firms having conflicts of interest that prevents their representation of our subsidiaries.

We spend a significant amount of our financial and management resources to pursue our current litigation matters. We believe that these litigation matters and others that we may in the future determine to pursue could continue for years and continue to consume significant financial and management resources. The counterparties to our litigation are sometimes large, well-financed companies with substantially greater resources than us. We cannot assure you that any of our current or future litigation matters will result in a favorable outcome for us. In addition, in part due to the appeals process and other legal processes, even if we obtain favorable interim rulings or verdicts in particular litigation matters, they may not be predictive of the ultimate resolution of the dispute. Also, we cannot assure you that we will not be exposed to claims or sanctions against us which may be costly or impossible for us to defend. The inability to retain the best legal counsel to represent our operating subsidiaries in infringement actions may result in unfavorable or adverse outcomes, which may result in losses, exhaustion of financial resources or other adverse effects which could encumber our ability to effectively operate our business or execute our business strategy.

Our operating subsidiaries, in certain circumstances, rely on representations, warranties and opinions made by third-parties that, if determined to be false or inaccurate, may expose us and our operating subsidiaries to certain material liabilities.

From time to time, our operating subsidiaries may rely upon representations and warranties made by third-parties from whom our operating subsidiaries acquired patents or the exclusive rights to license and enforce patents. We also may rely upon the opinions of purported experts. In certain instances, we may not have the opportunity to independently investigate and verify the facts upon which such representations, warranties, and opinions are made. By relying on these representations, warranties and opinions, our operating subsidiaries may be exposed to liabilities in connection with the licensing and enforcement of certain patents and patent rights which could have a material adverse effect on our operating results and financial condition.

In connection with patent enforcement actions conducted by certain of our subsidiaries, a court may rule that we or our subsidiaries have violated certain statutory, regulatory, federal, local or governing rules or standards, which may expose us and our operating subsidiaries to certain material liabilities.

In connection with any of our patent enforcement actions, it is possible that a defendant may request and/or a court may rule that we have violated statutory authority, regulatory authority, federal rules, local court rules, or governing standards relating to the substantive or procedural aspects of such enforcement actions. In such event, a court may issue monetary sanctions against us or our operating subsidiaries or award attorney's fees and/or expenses to a defendant(s), which could be material, and if we or our operating subsidiaries are required to pay such monetary sanctions, attorneys' fees and/or expenses, such payment could materially harm our operating results and our financial position.

In connection with patent enforcement actions conducted by certain of our subsidiaries, a court may find the patents invalid, not infringed or unenforceable and/or the U.S. Patent and Trademark Office, or the USPTO, or other relevant patent office, may either invalidate the patents or materially narrow the scope of their claims during the course of a reexamination, opposition or other such proceeding.

Patent litigation is inherently risky and the outcome is uncertain. Some of the parties that we believe infringe on our patents are large and well-financed companies with substantially greater resources than ours. We believe that these parties would devote a substantial amount of resources in an attempt to avoid or limit a finding that they are liable for infringing on our patents or, in the event liability is found, to avoid or limit the amount of associated damages. In addition, there is a risk that these parties may file inter-partes reviews, reexaminations or other proceedings with the USPTO or other government agencies in the United States or abroad in an attempt to invalidate, narrow the scope or render unenforceable the patents we own or control. If this were to occur, it may have a material adverse effect on our operations.

In addition, it is difficult to predict the outcome of patent enforcement litigation at any level. In the United States, there is a higher rate of appeals in patent enforcement litigation than standard business litigation. The defendant to any case we bring, may file as many appeals as allowed by right, including to the first, second and/or final courts of appeal (in the United States those courts would be the Federal Circuit and Supreme Court, respectively). Such appeals are expensive and time-consuming, and the outcomes of such appeals are sometimes unpredictable, resulting in increased costs and reduced or delayed revenue which could have a material adverse effect on our operating results and financial condition.

Our licensing cycle is lengthy and costly, and our legal and sales efforts may be unsuccessful.

We expect our operating subsidiaries to incur significant general and administrative and legal expenses prior to entering into license agreements and generating license revenues. We also spend considerable resources educating prospective licensees on the benefits of a license arrangement with us. As such, we may incur significant losses in any particular period before any associated revenue stream begins.

If our efforts to educate prospective licensees on the benefits of a license arrangement are unsuccessful, we may need to pursue litigation or other enforcement action to protect our patent rights. We may also need to litigate to enforce the terms of our existing license agreements, protect our trade secrets, or determine the validity and scope of the proprietary rights of others. Enforcement proceedings are typically protracted and complex. The costs are typically substantial, and the outcomes are unpredictable. Enforcement actions will divert our managerial, technical, legal and financial resources from business operations and there are no assurances that such enforcement actions will result in favorable results for us.

We expect patent-related legal expenses to continue to fluctuate from period to period.

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

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

Our equity investments are subject to risks and we may experience significant financial losses.

Our equity investments are subject to a high degree of risk and could diminish our financial condition. The overall sustained economic uncertainty, as well as financial, operational and other difficulties encountered by certain companies in which we have equity investments increases the risk that the actual amounts realized in the future on our debt and equity investments will differ significantly from the fair values currently assigned to them. In addition, the companies in which we have equity investments may not be able to compete effectively or there may be insufficient demand for the services and products offered by these companies. These investments could also expose us to significant financial losses and may limit alternative uses of our capital resources. If our investees suffer losses, our financial condition could be materially adversely affected. In addition, applicable securities law restrictions and other factors may result in an inability to liquidate any equity components of our equity investments.

We may engage in strategic acquisitions of certain assets or businesses that could affect our business, results of operations, financial condition and liquidity.

We intend to execute strategic acquisitions of businesses with a focus on mature technology, healthcare, industrial and certain financial segments. We intend to leverage our investment and operations experience to identify and pursue such targets. These may include acquisitions of entire companies, business divisions or operating segments of companies or other operating assets, which may at times begin with an initial acquisition of interests in companies. We intend to operate such businesses independently of our IP business.

Such acquisitions inherently involve a number of risks and presents financial, managerial and operational challenges, including:

- potential disruption of our ongoing business and distraction of management;
- difficulty with integration of personnel and financial and other systems;
- hiring additional management and other critical personnel; and
- increasing the scope, geographic diversity and complexity of our operations.

In addition, we may encounter unforeseen obstacles or costs in the integration of acquired businesses. For example, the presence of one or more material liabilities of an acquired company that are unknown to us at the time of acquisition may have a material adverse effect on our business. We may also opportunistically pursue dispositions of certain assets and businesses, which may involve material amounts of assets or lines of business, which could adversely affect our results of operations, financial condition and liquidity.

In addition, our strategic acquisitions and dispositions may also affect the diversity of our assets and our capital structure. As a result, our acquisitions and dispositions could affect our business, results of operations, financial condition, and liquidity. Further, all the risks associated with our acquisitions and dispositions may not be immediately known to us, and the anticipated benefits of such acquisition or disposition may not be fully realized.

We could recognize losses on our equity securities, including equity securities in the Portfolio Companies.

Factors beyond our control can significantly influence the value of our equity securities, including equity securities in the Portfolio Companies, and can cause potential adverse changes to the value of these securities. Relevant factors include, but are not limited to, fluctuations in market price, changes in our own analysis of the value of the security or instability in the financial markets. Any of the foregoing factors could cause other-than-temporary impairment in future periods and result in realized losses. The process for determining whether impairment is other-than-temporary usually requires difficult, subjective judgments about the future financial performance of the issuer. Because of changing economic and market conditions and the financial condition of issuers of the securities, we may recognize realized and/or unrealized losses in future periods, which could have an adverse effect on our financial condition and results of operations.

We may be subject to the risk of becoming an investment company under the Investment Company Act.

We may be subject to the risk of inadvertently meeting the definition of an investment company, which could require us to register as such under the Investment Company Act of 1940, as amended, or the Investment Company Act. Registered investment companies are subject to extensive, restrictive and potentially adverse regulations that impose, among other things, (i) limitations on capital structure, including the incurrence of indebtedness or the issuance of senior securities; (ii) restrictions on specified investments; (iii) prohibitions on transactions with affiliates; and (iv) compliance with reporting, record keeping, voting, proxy disclosure and other rules and regulations that would significantly change our operations. Registered investment companies are not permitted to operate their business in the manner in which we currently operate and plan to operate our business in the future.

We plan to monitor the value of our investments and structure our operations and transactions to qualify for exclusions under the Investment Company Act or to remain outside of the definition of an investment company. Accordingly, we may structure transactions in a less advantageous manner than if we did not have Investment Company Act concerns, or we may avoid otherwise economically desirable transactions due to those concerns. In addition, adverse developments with respect to our ownership of our operating subsidiaries, including significant appreciation or depreciation in the market value of certain of our publicly traded holdings, could result in our inadvertently becoming an investment company. If it were established that we were required to register as an investment company and failed to do so, there would be a risk, among other material adverse consequences, that we could become subject to monetary penalties or injunctive relief, or both, in an action brought by the SEC and that we would be prohibited from engaging in our business activities. In addition, any contracts that we entered into during the period in which we were deemed to be operating as an unregistered investment company would be unenforceable unless a court were to require enforcement, and a court could appoint a receiver to take control of us and liquidate our business. Our being deemed to be required to register as an investment company could also be an event of default under the terms of Notes that we have issued or may issue in the future or other material contracts.

Risks Related to Our Industry

Our exposure to uncontrollable outside influences, including new legislation, court rulings or actions by the USPTO, could adversely affect our licensing and enforcement business and results of operations.

Our licensing and enforcement business is subject to numerous risks from outside influences, including the following:

New legislation, regulations or rules related to obtaining patents or enforcing patents could significantly increase our operating costs and decrease our revenue.

Our operating subsidiaries invest in patents with enforcement opportunities and spend a significant amount of resources to enforce those patents. If new legislation, regulations or rules are implemented by Congress, the USPTO or the courts that impact the patent application process, the patent enforcement process or the rights of patent holders, such changes could negatively affect our business. United States patent laws were amended with the enactment of the Leahy-Smith America Invents Act, or the America Invents Act, which took effect on March 16, 2013. The America Invents Act includes a number of significant changes to U.S. patent law. In general, the legislation attempts to address issues surrounding the enforceability of patents and the increase in patent litigation by, among other things, establishing new procedures for patent litigation. For example, the America Invents Act changes the way that parties may be joined in patent infringement actions, increasing the likelihood that such actions will need to be brought against individual allegedly-infringing parties by their respective individual actions or activities. In addition, the America Invents Act enacted a new inter-partes review process, or IPR process, at the USPTO which can be, and often is, used by defendants, and other individuals and entities, to separately challenge the validity of any patent. The IPR process of the America Invents Act has in many instances increased costs for licensing and litigation and has resulted in the loss of certain portfolio patents which, in some cases, may have negatively impacted the value of those portfolios. The America Invents Act and its implementation has increased the uncertainties and costs surrounding the enforcement of our patented technologies, which in certain circumstances could have a material adverse effect on our business and financial condition.

Finally, new rules regarding the burden of proof in patent enforcement actions could significantly increase the cost of our enforcement actions, and new standards or limitations on liability for patent infringement could negatively impact our revenue derived from such enforcement actions. In addition, recent federal court decisions have lowered the threshold for obtaining attorneys' fees in patent infringement cases and increased the level of deference given to a district court's fee-shifting determination. These decisions may make it easier for district courts to shift a prevailing party's attorneys' fees to a non-prevailing party if the district court believes that the case was weak or conducted in an abusive manner. As a result, defendants in patent infringement actions brought by non-practicing entities may elect not to settle because these decisions make it much easier for defendants to get attorneys' fees.

Changes in patent law could adversely impact our business.

Patent laws may continue to change, and may alter the historically consistent protections afforded to owners of patent rights. Such changes may not be advantageous for us and may make it more difficult to obtain adequate patent protection to enforce our patents against infringing parties. Increased focus on the growing number of patent-related lawsuits may result in legislative changes which increase our costs and related risks of asserting patent enforcement actions. For instance, the United States Congress has considered a bill that would require, among other things, non-practicing entities that bring patent infringement lawsuits to pay legal costs of the defendants, if the lawsuits are unsuccessful and certain standards are not met.

Trial judges and juries often find it difficult to understand complex patent enforcement litigation, and as a result, we may need to appeal adverse decisions by lower courts in order to successfully enforce our patents.

It is difficult to predict the outcome of patent enforcement litigation at the trial level. It is often difficult for juries and trial judges to understand complex, patented technologies, and as a result, there is a higher rate of successful appeals in patent enforcement litigation than more standard business litigation. Such appeals are expensive and time consuming, resulting in increased costs and delayed revenue. Although we diligently pursue enforcement litigation, we cannot predict with significant reliability the decisions made by juries and trial courts.

More patent applications are filed each year resulting in longer delays in getting patents issued by the USPTO.

Certain of our operating subsidiaries hold and continue to invest in pending patents. We have identified a trend of increasing patent applications each year, which we believe is resulting in longer delays in obtaining approval of pending patent applications. The application delays could cause delays in recognizing revenue from these patents and could cause us to miss opportunities to license patents before other competing technologies are developed or introduced into the market.

Federal courts are becoming more crowded, and as a result, patent enforcement litigation is taking longer.

Our patent enforcement actions are almost exclusively prosecuted in federal court. Federal trial courts that hear our patent enforcement actions also hear criminal cases. Criminal cases always take priority over our actions. As a result, it is difficult to predict the length of time it will take to complete an enforcement action. Moreover, we believe there is a trend in increasing numbers of civil lawsuits and criminal proceedings before federal judges and, as a result, we believe that the risk of delays in our patent enforcement actions will have a greater negative effect on our business in the future unless this trend changes.

Any reductions in the funding of the USPTO could have an adverse impact on the cost of processing pending patent applications and the value of those pending patent applications.

The assets of our operating subsidiaries consist of patent portfolios, including pending patent applications before the USPTO. The value of our patent portfolios is dependent upon the issuance of patents in a timely manner, and any reductions in the funding of the USPTO could negatively impact the value of our assets. Further, reductions in funding from Congress could result in higher patent application filing and maintenance fees charged by the USPTO, causing an increase in our expenses.

Competition is intense in the industries in which our subsidiaries do business and as a result, we may not be able to grow or maintain our market share for our technologies and patents.

We expect to encounter competition in the area of patent portfolio investments and enforcement. This includes competitors seeking to invest in the same or similar patents and technologies that we may seek to invest in. As new technological advances occur, many of our patented technologies may become obsolete before they are completely monetized. If we are unable to replace obsolete technologies with more technologically advanced patented technologies, then this obsolescence could have a negative effect on our ability to generate future revenues.

Our licensing business also competes with venture capital firms and various industry leaders for patent licensing opportunities. Many of these competitors may have more financial and human resources than we do. As we become more successful, we may find more companies entering the market for similar technology opportunities, which may reduce our market share in one or more technology industries that we currently rely upon to generate future revenue.

Our patented technologies face uncertain market value.

Our operating subsidiaries have invested in patents and technologies that may be in the early stages of adoption in the commercial and consumer markets. Demand for some of these technologies is untested and is subject to fluctuation based upon the rate at which our licensees will adopt our patents and technologies in their products and services.

Further, significant judgment is required in connection with estimates of the recoverability of the carrying value of our intangible patent assets, including estimates of market values, estimates of the amount and timing of future cash flows, and estimates of other factors that are used to determine the fair value and recoverability of the respective patent asset values. Developments with respect to ongoing patent litigation, patent challenges and re-exams, legislative and judicial decisions and other factors outside of our control, may unfavorably impact the validity, applicability, and enforceability of our patent assets, and therefore, negatively impact the future value of our patent portfolios. If certain of these unfavorable events occur, our estimates or related projections may change materially in future periods, and future intangible asset impairment tests may result in material charges to earnings.

Patent litigation trials and scheduled trial dates are subject to routine delay, and any such delays could adversely impact our business, results of operations and financial condition.

Patent infringement trials are components of our overall patent licensing process and are one of many factors that contribute to the existence of possible future revenue opportunities for us. Patent litigation schedules in general, and in particular trial dates, are subject to routine adjustment, and in most cases delay, as courts adjust their calendars or respond to requests from one or more parties. Trial dates often are rescheduled by the court for various reasons that are often unrelated to the underlying patent assets and typically for reasons that are beyond our control. As a result, to the extent such events are an indicator of possible future revenue opportunities for us, or other outcome determinative events, they may and often do change which can result in delay of the expected scheduled event. Any such delay could be significant and could affect the corresponding future revenue opportunities, thus adversely impacting our business, results of operations and financial condition.

The markets served by our operating subsidiaries are subject to rapid technological change, and if our operating subsidiaries are unable to develop and invest in new technologies and patents, our ability to generate revenues could be substantially impaired.

The markets served by our operating subsidiaries and their licensees frequently undergo transitions in which products rapidly incorporate new features and performance standards on an industry-wide basis. Products for communications applications and high-speed computing applications, as well as other applications covered by our operating subsidiaries' IP, are based on continually evolving industry standards. In addition, the communications industry is intensely competitive and has been impacted by price erosion, rapid technological change, short product life cycles, cyclical market patterns and increasing foreign and domestic competition. Our ability to compete in the future will depend on our ability to identify and ensure compliance with evolving industry standards. This will require our continued efforts and success in acquiring new patent portfolios with licensing and enforcement opportunities. If we are unable to invest in new patented technologies and patent portfolios, or to identify and ensure compliance with evolving industry standards, our ability to generate revenues could be substantially impaired and our business and financial condition could be materially harmed.

Uncertainty in global economic conditions could negatively affect our business, results of operations and financial condition.

Our revenue-generating opportunities depend on the use of our patented technologies by existing and prospective licensees, the overall demand for the products and services of our licensees, and on the overall economic and financial health of our licensees. If economic conditions do not continue to improve, or if they deteriorate, many of our licensees' customers, which may rely on credit financing, may delay or reduce their purchases of our licensees' products and services. In addition, the use or adoption of our patented technologies is often based on current and forecasted demand for our licensees' products and services in the marketplace and may require companies to make significant initial commitments of capital and other resources. If negative conditions in the global credit markets delay or prevent our licensees' and their customers' access to credit, overall consumer spending on the products and services of our licensees may decrease and the adoption or use of our patented technologies may slow, respectively. Further, if the markets in which our licensees' participate do not continue to improve, or deteriorate further, this could negatively impact our licensees' long-term sales and revenue generation, margins and operating expenses, which could in turn have an adverse effect on our business, results of operations and financial condition.

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

Public health threats and other highly communicable diseases, outbreaks of which have already occurred in various parts of the world, could adversely impact our operations, as well as the operations of our licensees and other business partners. For example, the outbreak in December 2019 of a novel coronavirus (COVID-19) has resulted in decreased economic activity in China, as well as a number of other countries, and the scope of the outbreak and its impacts is continuing to expand. We have taken precautions in the operation of our own business and maintain an up-to-date disaster recovery and business continuity policy as well as have the systems and support to have our workforce work remotely for an indefinite period of time. However, any further spread of the COVID-19 outbreak, or the occurrence of other similar outbreaks or epidemics, could have a material adverse effect on our business, operations and financial results.

To date, COVID-19 has not had a material effect on our licensing efforts or litigation schedules. Teleconferencing has effectively replaced in-person meetings and, in most cases, courtroom proceedings.

Risks Related to Our Common Stock

The availability of shares for sale in the future could reduce the market price of our common stock.

In the future, we may issue securities to raise cash for operations and patent portfolio investments. We may also pay for interests in additional subsidiary companies by using shares of our common stock or a combination of cash and shares of our common stock. We may also issue securities convertible into our common stock. Any of these events may dilute stockholders' ownership interests in our company and have an adverse impact on the price of our common stock.

In addition, sales of a substantial amount of our common stock in the public market, or the perception that these sales may occur, could reduce the market price of our common stock. This could also impair our ability to raise additional capital through the sale of our securities.

Delaware law and our charter documents contain provisions that could discourage or prevent a potential takeover of our company that might otherwise result in our stockholders receiving a premium over the market price of their shares.

Provisions of Delaware law and our certificate of incorporation and bylaws could make the acquisition of our company by means of a tender offer, proxy contest or otherwise, and the removal of incumbent officers and directors, more difficult. These provisions include:

- Section 203 of the Delaware General Corporation Law, which prohibits a merger with a 15%-or-greater stockholder, such as a party that has completed a successful tender offer, until three years after that party became a 15%-or-greater stockholder;
- amendment of our bylaws by the stockholders requires a two-thirds approval of the outstanding shares;
- the authorization in our certificate of incorporation of undesignated preferred stock, which could be issued without stockholder approval in a manner designed to prevent or discourage a takeover; and
- the general restriction in our certificate of incorporation on any direct or indirect transfers of our common stock if the effect would be to (i) increase the direct or indirect ownership of our common stock by any person or group from less than 4.899% to 4.899% or more of our common stock; or (ii) increase the percentage of our common stock owned directly or indirectly by a person or group owning or deemed to own 4.899% or more of our common stock.

Together, these provisions may make the removal of management more difficult and may discourage transactions that could otherwise involve payment of a premium over prevailing market prices for our common stock.

Our Tax Benefits Preservation Plan could inhibit a change in our control that may otherwise be favorable to our stockholders.

In March 2019, our board of directors approved the adoption of a Tax Benefits Preservation Plan in order to protect our ability to utilize potential tax assets, such as net operating loss carryforwards and tax credits, to offset potential future taxable income by discouraging investors from acquiring ownership of our common stock in a manner that could trigger an “ownership change” for purposes of Section 382 of the Code. Our stockholders ratified the adoption of the Tax Benefits Preservation Plan in July 2019.

Under the terms of the Tax Benefits Preservation Plan, in general, if a person or group acquires beneficial ownership of 4.9% or more of the outstanding shares of our Common Stock without prior approval of our board of directors or without meeting certain exceptions, the rights would become exercisable and our stockholders (other than the acquiring person) will have the right to purchase securities from us at a discount to such securities’ fair market value, thus causing substantial dilution to the acquiring person. As a result, the Tax Benefits Preservation Plan may have the effect of inhibiting or impeding a change in control not approved by our board of directors and, notwithstanding its purpose, could adversely affect our stockholders’ ability to realize a premium over the then-prevailing market price for our common stock in connection with such a transaction. In addition, because our board of directors may consent to certain transactions, the Tax Benefits Preservation Plan gives our board of directors significant discretion over whether a potential acquirer’s efforts to acquire a large interest in us will be successful. There can be no assurance that the Tax Benefits Preservation Plan will prevent an “ownership change” within the meaning of Section 382 of the Code, in which case we may lose all or most of the anticipated tax benefits associated with our prior losses.

We may fail to meet market expectations because of fluctuations in quarterly operating results, which could cause the price of our common stock to decline.

Our reported revenues and operating results have fluctuated in the past and may continue to fluctuate significantly from quarter to quarter in the future. It is possible that in future periods, revenues could fall below the expectations of securities analysts or investors, which could cause the market price of our common stock to decline. The following are among the factors that could cause our operating results to fluctuate significantly from period to period:

- the dollar amount of agreements executed in each period, which is primarily driven by the nature and characteristics of the technology being licensed and the magnitude of infringement associated with a specific licensee;
- the specific terms and conditions of agreements executed in each period and the periods of infringement contemplated by the respective payments;
- fluctuations in the total number of agreements executed;
- fluctuations in the sales results or other royalty-per-unit activities of our licensees that impact the calculation of license fees due;
- the timing of the receipt of periodic license fee payments and/or reports from licensees;
- fluctuations in the net number of active licensees period to period;
- costs related to investments, alliances, licenses and other efforts to expand our operations;
- the timing of payments under the terms of any customer or license agreements into which our operating subsidiaries may enter;
- we may elect to account for equity investments in companies where our investment gives us the ability to exercise significant influence over the operating and financial policies of the investee at fair value, which may result in significant fluctuations in operating results (unrealized gains and losses) each period based on fluctuations in the stock price of our investments and the requirement to mark such investments to market at each balance sheet date;
- expenses related to, and the timing and results of, patent filings and other enforcement proceedings relating to IP rights, as more fully described in this section; and
- new litigation or developments in current litigation and the unpredictability of litigation results or settlements or appeals.

Technology company stock prices are especially volatile, and this volatility may depress the price of our common stock.

The stock market has experienced significant price and volume fluctuations, and the market prices of technology companies have been highly volatile. We believe that various factors may cause the market price of our common stock to fluctuate, perhaps substantially, including, among others, the following:

- announcements of developments in our patent enforcement actions;
- developments or disputes concerning our patents;
- our or our competitors' technological innovations;
- developments in relationships with licensees;
- variations in our quarterly operating results;
- our failure to meet or exceed securities analysts' expectations of our financial results;
- a change in financial estimates or securities analysts' recommendations;
- changes in management's or securities analysts' estimates of our financial performance;
- changes in market valuations of similar companies;
- concerns about sovereign debt of the United States and the European Union;
- announcements by us or our competitors of significant contracts, investments, partnerships, joint ventures, capital commitments, new technologies, or patents; and
- failure to complete significant transactions.

For example, the NASDAQ-100 Technology Sector Index (NDXT) had a range of \$4,030.77 - \$7,563.77 during the 52 weeks ended December 31, 2020 and the NASDAQ Composite Index (IXIC) had a range of \$6,860.67 - \$12,899.42 over the same period. Over the same period, our common stock fluctuated within a range of \$2.01 - \$4.25.

As noted above, our stock price, like many others, has fluctuated significantly in recent periods and if investors have concerns that our business, operating results and financial condition will be negatively impacted by industry, global economic or other negative conditions, our stock price could continue to fluctuate significantly in future periods.

In addition, we believe that fluctuations in our stock price during applicable periods can also be impacted by court rulings and/or other developments in our patent licensing and enforcement actions. Court rulings in patent enforcement actions are often difficult to understand, even when favorable or neutral to the value of our patents and our overall business, and we believe that investors in the market may overreact, causing fluctuations in our stock prices that may not accurately reflect the impact of court rulings on our business operations and assets.

In the past, companies that have experienced volatility in the market price of their stock have been the objects of securities class action litigation. If our common stock was the object of securities class action litigation, it could result in substantial costs and a diversion of management's attention and resources, which could materially harm our business and financial results.

We do not currently intend to pay dividends on our common stock in the foreseeable future, and consequently, your ability to achieve a return on your investment will depend on appreciation in the price of our common stock.

On February 23, 2016, our board of directors eliminated our dividend policy that provided for the discretionary payment of a total annual cash dividend of \$0.50 per share to holders of our common stock, payable in the amount of \$0.125 per share per quarter, effective as of February 23, 2016. As a result, we do not anticipate paying any cash dividends to holders of our common stock in the foreseeable future. Consequently, investors must rely on sales of their common stock after price appreciation, which may never occur, as the only way to realize any future gains on their investments. There is no guarantee that shares of our common stock will appreciate in value or even maintain the price at which our stockholders have purchased their shares.

The issuance of the Starboard Securities (defined below) to Starboard Value LP, or Starboard, and its permitted transferees dilutes the ownership and relative voting power of holders of our common stock and may adversely affect the market price of our common stock.

Pursuant to a Securities Purchase Agreement with Starboard, dated November 18, 2019, the Company sold to Starboard (i) 350,000 shares of its newly designated Series A Preferred Stock and Series A Warrants to purchase up to 5,000,000 shares of common stock in 2019, and (ii) Series B Warrants to purchase up to 100,000,000 shares of common stock in 2020. The investment by Starboard is referred to herein as the “Starboard Investment,” and the Series A Preferred Stock, Series A Warrants and Series B Warrants are referred to herein as, collectively, the “Starboard Securities.”

As of December 31, 2020, the Series A Preferred Stock held by Starboard represents approximately 16% of our outstanding common stock on an as-converted basis. Because holders of our Series A Preferred Stock are entitled to vote, on an as-converted basis, together with holders of our common stock on all matters submitted to a vote of the holders of our common stock, the issuance of the Series A Preferred Stock to Starboard effectively reduces the relative voting power of the holders of our common stock.

In addition, the conversion and/or exercise of the Starboard Securities into common stock would dilute the ownership interest of existing holders of our common stock. Furthermore, any sales in the public market of the common stock issuable upon conversion or exercise of the Starboard Securities could adversely affect prevailing market prices of our common stock. Pursuant to a customary Registration Rights Agreement with Starboard, we have registered for resale under the Securities Act of 1933 of 130% of the shares of common stock underlying Starboard Securities outstanding as of November 9, 2020. In addition, we have agreed to provide (i) certain demand registration rights with respect to the Starboard Securities and (ii) additional registration rights with respect to the shares of common stock issued upon the conversion or exercise of the Starboard Securities, to the extent not included in previous registration statements. These registrations may facilitate the resale of such securities into the public market, and any such resale would increase the number of shares of our common stock available for public trading. Sales by Starboard of a substantial number of shares of our common stock in the public market, or the perception that such sales might occur, could have a material adverse effect on the price of our common stock.

Our Series A Preferred Stock has rights, preferences and privileges that are not held by, and are preferential to, the rights of, our common stockholders, which could adversely affect our liquidity and financial condition, result in the interests of holders of our Series A Preferred Stock differing from those of our common stockholders and delay or prevent an attempt to take over the Company.

Starboard and the other holders of our Series A Preferred Stock have a liquidation preference entitling them to be paid, before any payment may be made to holders of our common stock in connection with a liquidation event, an amount per share of Series A Preferred Stock equal to the greater of (i) the stated value thereof plus accrued and unpaid dividends, and (ii) the amount that would have been received had such share of Series A Preferred Stock been converted into common stock immediately prior to such liquidation event.

Holders of Series A Preferred Stock are entitled to a preferential cumulative dividend at the rate of 3.0% per annum, payable quarterly in arrears. Upon the consummation of a suitable investment or acquisition by the Company, such investment to be identified and approved by each of the Company and Starboard, the dividend rate will increase to 8.0% per annum.

The holders of our Series A Preferred Stock also have certain redemption rights, including the right to require us to repurchase all or any portion of the Series A Preferred Stock during certain specified periods and subject to certain conditions set forth in the Certificate of Designations, Preferences, and Rights of Series A Convertible Preferred Stock, or the Certificate of Designations. Holders of the Series A Preferred Stock also have the right, subject to certain exceptions, to require us to repurchase all or any portion of the Series A Preferred Stock upon certain change of control events.

These dividend and share repurchase obligations could impact our liquidity and reduce the amount of cash flows available for working capital, capital expenditures, growth opportunities, acquisitions, and other general corporate purposes. The preferential rights could also result in divergent interests between Starboard and holders of our common stock. Furthermore, a sale of our Company, as a change of control event, may require us to repurchase Series A Preferred Stock, which could have the effect of making an acquisition of the Company more expensive and potentially deterring proposed transactions that may otherwise be beneficial to our stockholders.

Starboard has certain rights, including the ability to designate up to three members of our board of directors.

The transaction documents entered into in connection with the Starboard Investment grant to Starboard consent rights with respect to certain actions by us, including:

- amending our organizational documents in a manner that would have an adverse effect on the Series A Preferred Stock; and
- increasing the maximum number of directors on our board to more than seven persons, subject to the terms of the Governance Agreement entered into in connection with the Securities Purchase Agreement, or the Governance Agreement.

The Securities Purchase Agreement also imposes a number of affirmative and negative covenants on us.

In addition, the terms of the Governance Agreement grant Starboard certain rights to designate directors to be nominated for election by holders of our common stock. For so long as certain criteria set forth in the Governance Agreement are satisfied, including that Starboard beneficially own, in the aggregate, at least 4.0% of the Company's then-outstanding common stock (on an as-converted basis, if applicable), Starboard has the right to designate up to three directors for election to our Board.

The directors designated by Starboard also are entitled to serve on committees of our Board, subject to applicable law and stock exchange rules.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 2. PROPERTIES

Our principal executive office is located in New York, New York, where we lease approximately 4,000 square feet of office space, under a lease agreement that expires in 2022. We also have an office for operational and administrative functions located in Irvine, California, where we lease approximately 8,293 square feet of office space, under a lease agreement that expires in 2024. Our primary operating subsidiary, Acacia Research Group, LLC, and its subsidiaries, are headquartered in Frisco, Texas, where we lease office space under a lease agreement that expires in 2021. We believe that our facilities are adequate, suitable and of sufficient capacity to support our immediate needs.

ITEM 3. LEGAL PROCEEDINGS

In the ordinary course of business, we are the subject of, or party to, various pending or threatened legal actions, including various counterclaims in connection with our patent enforcement activities. We believe that any liability arising from these actions will not have a material adverse effect on our consolidated financial position, results of operations or cash flows.

Our operating subsidiaries are often required to engage in litigation to enforce their patents and patent rights. Certain of our operating subsidiaries are parties to ongoing patent enforcement related litigation, alleging infringement by third-parties of certain of the patented technologies owned or controlled by our operating subsidiaries.

In connection with any of our patent enforcement actions, it is possible that a defendant may claim and/or a court may rule that we have violated statutory authority, regulatory authority, federal rules, local court rules, or governing standards relating to the substantive or procedural aspects of such enforcement actions. In such event, a court may issue monetary sanctions against us or our operating subsidiaries or award attorney's fees and/or expenses to a defendant(s), which could be material, and if required to be paid by us or our operating subsidiaries, could materially harm our operating results and our financial position.

We spend a significant amount of our financial and management resources to pursue our current litigation matters. We believe that these litigation matters and others that we may in the future determine to pursue could continue for years and continue to consume significant financial and management resources. The counterparties to our litigation are sometimes large, well-financed companies with substantially greater resources than us. We cannot assure you that any of our current or future litigation matters will result in a favorable outcome for us. In addition, in part due to the appeals process and other legal processes, even if we obtain favorable interim rulings or verdicts in particular litigation matters, they may not be predictive of the ultimate resolution of the dispute. Also, we cannot assure you that we will not be exposed to claims or sanctions against us which may be costly or impossible for us to defend. Unfavorable or adverse outcomes may result in losses, exhaustion of financial resources or other adverse effects which could encumber our ability to effectively and efficiently monetize our assets.

On September 6, 2019, Slingshot Technologies, LLC, or Slingshot, filed a lawsuit in Delaware Chancery Court against the Company and Acacia Research Group, LLC, or collectively, the Acacia Entities, Monarch Networking Solutions LLC ("Monarch"), Acacia board member Katharine Wolanyk, and Transpacific IP Group, Ltd., or Transpacific. Slingshot alleges that the Acacia Entities and Monarch misappropriated its confidential and proprietary information, purportedly furnished to the Acacia Entities and Monarch by Ms. Wolanyk, in acquiring a patent portfolio from Transpacific after Slingshot's exclusive option to purchase the same patent portfolio from Transpacific had already expired. Slingshot seeks monetary damages, as well as equitable and injunctive relief related to its alleged right to own the portfolio. On March 15, 2021, the court issued orders granting Monarch's motion to dismiss for lack of personal jurisdiction and Ms. Wolanyk's motion to dismiss for lack of subject matter jurisdiction. The Acacia Entities maintain that Slingshot's allegations are baseless, that the Acacia Entities neither had access to nor used Slingshot's information in acquiring the portfolio, that the Acacia Entities acquired the portfolio as a result of the independent efforts of its IP licensing group, and that Slingshot suffered no damages given its exclusive option to purchase the portfolio had already ended and it has proven itself incapable of closing on the portfolio purchase.

ITEM 4. MINE SAFETY DISCLOSURES

None.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

General

Our common stock trades on The NASDAQ Global Select Market under the symbol "ACTG."

Dividend Policy

On April 23, 2013, we announced that our board of directors approved the adoption of a cash dividend policy that called for the payment of an expected total annual cash dividend of \$0.50 per share to holders of our common stock, payable in the amount of \$0.125 per share per quarter. On February 23, 2016, our board of directors terminated the company's dividend policy due to a number of factors, including our financial performance, our available cash resources, our cash requirements and alternative uses of capital that our board of directors concluded would represent an opportunity to generate a greater return on investment for us and our stockholders.

The current policy of our board of directors is to retain earnings, if any, to provide for our growth. Consequently, we do not expect to pay any cash dividends in the foreseeable future. Further, there can be no assurance that our proposed operations will generate revenues and cash flow needed to declare any future cash dividends or that we will have legally available funds to pay future dividends.

Recent Sales of Unregistered Securities

None.

Stock Repurchase Program

None.

Holders of Common Stock

On March 24, 2021, there were approximately 63 owners of record of our common stock. The majority of the outstanding shares of our common stock are held by a nominee holder on behalf of an indeterminable number of ultimate beneficial owners.

ITEM 6. SELECTED FINANCIAL DATA

Not required for "smaller reporting companies."

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion should be read in conjunction with our consolidated financial statements included elsewhere in this annual report. This discussion contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of various factors including the risks we discuss in Item 1A, "Risk Factors," and elsewhere herein.

General

We acquire businesses and operating assets that we believe to be undervalued and where we believe we can leverage our resources and skill sets to realize and unlock value. We leverage our (i) access to flexible capital that can be deployed unconditionally, (ii) expertise in corporate governance and operational restructuring, (iii) willingness to invest in out of favor industries and businesses that suffer from a complexity discount and untangle complex, multi-factor situations, and (iv) expertise and relationships in certain sectors, to complete strategic acquisitions of businesses, divisions, and/or assets with a focus on mature technology, healthcare, industrial and certain financial segments. We seek to identify opportunities where we believe we are advantaged buyers, where we can avoid structured sale processes and create the opportunity to purchase a company at an attractive price due to our unique capabilities, relationships, or expertise, or where we believe the target would be worth more to us than to other buyers.

We operate our business based on three key principles of People, Process and Performance and have built a management team with identified expertise in Research, Execution and Operation of our targeted acquisitions.

We also operate our legacy business of investing in intellectual property, or IP, and related absolute return assets and engaging in the licensing and enforcement of patented technologies. We partner with inventors and patent owners, from small entities to large corporations, applying our legal and technology expertise to patent assets to unlock the financial value in their patented inventions. We are an intermediary in the patent marketplace, bridging the gap between invention and application, and facilitating efficiency in connection with the monetization of patent assets.

Our IP business generates revenues and related cash flows from the granting of patent rights for the use of patented technologies that our operating subsidiaries control or own. We assist patent owners with the prosecution and development of their patent portfolios, the protection of their patented inventions from unauthorized use, the generation of licensing revenue from users of their patented technologies and, where necessary, with the enforcement against unauthorized users of their patented technologies through the filing of patent infringement litigation. We are principals in the licensing and enforcement effort, obtaining control of the rights in the patent portfolio, or control of the patent portfolio outright.

Our business is described more fully in Item 1. “Business,” of this annual report.

Executive Overview

During 2020 and 2019, we focused on diversifying our business and leveraging our resources and skill sets to complete strategic acquisitions of businesses, divisions, and/or assets with a focus on mature technology, healthcare, industrial and certain financial segments intended to unlock and realize value.

This led to our acquisition of a portfolio of equity securities of life science businesses (the “Portfolio Companies”) in June 2020. In connection with the purchase of the equity securities in these Portfolio Companies, we issued to certain funds and accounts, or the Buyers, affiliated with, or managed by, Starboard Value LP, or Starboard, \$115 million principal amount of our senior secured notes, or Notes. As of December 31, 2020, we have monetized a portion of the portfolio while retaining an interest in a number of operating businesses, including a controlling interest in one of the Portfolio Companies. Further, some of the businesses in which we continue to hold an interest are businesses that generate revenues through the receipt of royalties. Refer to “Recent Business Matters – Starboard Securities” and “Recent Business Matters – LF Equity Income Fund Portfolio Investment” below, and Notes 16 and 17 to our notes to consolidated financial statements for more information related to the Notes and the Portfolio Companies.

For the years ended December 31, 2020 and 2019, we reported revenues of \$29.8 million and \$11.2 million. Cash and cash equivalents and trading securities totaled \$274.6 million as of December 31, 2020, as compared to \$168.3 million as of December 31, 2019. Our operating activities during the periods presented were focused on the continued operation of our patent licensing and enforcement business, including the continued pursuit of our ongoing patent licensing and enforcement programs.

Patent Licensing and Enforcement

Patent Litigation Trial Dates and Related Trials. As of the date of this report, our operating subsidiaries have three pending patent infringement cases with a scheduled trial date in the next twelve months. Patent infringement trials are components of our overall patent licensing process and are one of many factors that contribute to possible future revenue generating opportunities for us. Although we diligently pursue enforcement litigation, we cannot predict with reliability the decisions made by juries and trial courts. Please refer to Item 1A. “Risk Factors” for additional information regarding trials, patent litigation and related risks.

Litigation and Licensing Expense. We expect patent-related legal expenses to continue to fluctuate from period to period based on the factors summarized herein, in connection with future trial dates, international enforcement, strategic patent portfolio prosecution and our current and future patent portfolio investment, prosecution, licensing and enforcement activities.

Patent Portfolio Intake

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

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

Recent Business Matters

Starboard Securities. In 2019, as part of its strategy to grow, the Company began evaluating a wide range of strategic opportunities that culminated in the strategic investment in the Company by certain funds and accounts, or the Buyers, affiliated with, or managed by, Starboard Value LP, or Starboard. On November 18, 2019, the Company entered into a Securities Purchase agreement with Starboard and the Buyers, or the Securities Purchase Agreement, pursuant to which the Buyers purchased (i) 350,000 shares of the Company’s newly designated Series A Convertible Preferred Stock, or Series A Preferred Stock, at an aggregate purchase price of \$35,000,000, and warrants to purchase up to 5,000,000 shares of the Company’s common stock, or Series A Warrants. The Securities Purchase Agreements also established the terms of certain senior secured notes, or Notes, and additional warrants, or the Series B Warrants, which may be issued to the Buyers in the future. Refer to Notes 2, 14 and 16 to the consolidated financial statements elsewhere herein for more information related to the Series A Preferred Stock, Series A Warrants and Series B Warrants. In connection with the Buyers’ investment, Starboard was granted certain corporate governance rights, including the right to appoint Jonathan Sagal, Managing Director of Starboard, as a director of the Company and recommend two additional directors for appointment to our Board of Directors. The investment by the Buyers is referred to herein as the “Starboard Investment,” and the Series A Preferred Stock, Series A Warrants and Series B Warrants are referred to herein as, collectively, the “Starboard Securities.”

On February 14, 2020, the Company’s stockholders approved, for purposes of Nasdaq Rules 5635(b) and 5635(d), as applicable, (i) the voting of the Series A Preferred Stock on an as-converted basis and (ii) the issuance of the maximum number of shares of common stock issuable in connection with the potential future (A) conversion of the Series A Preferred Stock and (B) exercise of the Series A and Series B Warrants, in each case, without giving effect to the exchange cap set forth in the Series A Preferred Stock Certificate of Designations and in the Series A Warrants, issued pursuant to the Securities Purchase Agreement dated November 18, 2019. Refer to Notes 14 and 16 to the consolidated financial statements elsewhere herein for additional information. The Company’s stockholders also approved an amendment to the Company’s Amended and Restated Certificate of Incorporation to increase the total number of authorized shares of common stock by 200,000,000 shares, from 100,000,000 shares to 300,000,000 shares.

On February 25, 2020, pursuant to the terms of the Securities Purchase Agreement with Starboard and the Buyers, the Company issued Series B Warrants to purchase up to 100 million shares of the Company's common stock at an exercise price of either (i) \$5.25 per share, if exercising by cash payment, or (ii) \$3.65 per share, if exercising by cancellation of a portion of Notes. The Company issued the Series B Warrants for an aggregate purchase price of \$4.6 million. Refer to Note 16 to the consolidated financial statements elsewhere herein for additional information.

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

On June 30, 2020, the Company entered into an Exchange Agreement, or the Exchange Agreement, with Merton Acquisition HoldCo LLC, a Delaware limited liability company and wholly-owned subsidiary of the Company, or Merton and Starboard, on behalf of itself and on behalf of the Buyers, including the holders of the Notes. Pursuant to the Exchange Agreement, the holders of the Notes exchanged the entire outstanding principal amount for new senior notes, or the New Notes, issued by Merton having an aggregate outstanding original principal amount of \$115 million. The New Notes bear interest at a rate of 6.00% per annum and had a maturity date of December 31, 2020. The New Notes are fully guaranteed by the Company and are secured by an all-assets pledge of the Company and Merton and non-recourse equity pledges of each of the Company's material subsidiaries. Pursuant to the Exchange Agreement, the New Notes (i) are deemed to be "Notes" for purposes of the Securities Purchase Agreement, (ii) are deemed to be "June 2020 Approved Investment Notes" for purposes of the Supplemental Agreement, and therefore the Company initially agreed to redeem \$80 million principal amount of the New Notes by September 30, 2020, and \$35 million principal amount of the New Notes by December 31, 2020, and (iii) are deemed to be "Notes" for the purposes of the Series B Warrants, and therefore may be tendered pursuant to a Note Cancellation under the Series B Warrants on the terms set forth in the Series B Warrants and the New Notes. Delivery of notes in the form of the New Notes will also satisfy the delivery of Exchange Notes pursuant to Section 16(i) of the Certificate of Designations of the Company's Series A Convertible Preferred Stock, par value \$0.001 per share. The New Notes will not, however, be deemed to be "Notes" for the purposes of the Registration Rights Agreement, dated as of November 18, 2019, by and between the Company, Starboard and the Buyers. On January 29, 2021, the Company redeemed \$50 million of the New Notes, and the parties agreed that the Company will redeem the remaining \$65 million of the principal amount of the New Notes on or before July 15, 2021.

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

On June 4, 2020, the Company executed the Transaction Agreement between Link Fund Solutions Limited, or Link, Seller, and the Company. Pursuant to the Transaction Agreement, the Company agreed to purchase from Seller and Seller agreed to transfer to the Company the specified equity securities of all Portfolio Companies at set prices at various future dates. In accordance with the Transaction Agreement, the Company transferred the total purchase price of £223.9 million into an escrow account. Upon the transfer of equity securities in the Portfolio Companies to the Company, the associated funds were released from the escrow account to Seller based on the consideration amount assigned to the equity securities in the Transaction Agreement. As of December 31, 2020, all of the equity securities in the Portfolio Companies were transferred to the Company pursuant to the Transaction Agreement. The Company has sold a portion of the equity securities of such Portfolio Companies while retaining an interest in a number of operating businesses, including a controlling interest in one of the Portfolio Companies. Refer to Note 17 to the consolidated financial statements elsewhere herein for additional information.

Operating Activities

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

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

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

Revenues for the periods presented included fees from the following licensing and enforcement programs:

- | | |
|--|--|
| · Bone Wedge technology ⁽¹⁾⁽²⁾ | · Semiconductor and Memory-Related technology ⁽¹⁾⁽²⁾ |
| · Computer-Aided Design technology ⁽¹⁾ | · Speech codecs used in wireless and wireline systems technology ⁽¹⁾⁽²⁾ |
| · GPS navigation technology ⁽¹⁾ | · Super Resolutions Microscopy technology ⁽¹⁾⁽²⁾ |
| · Internet radio ad insertion technology ⁽¹⁾ | · Video Conferencing technology ⁽¹⁾⁽²⁾ |
| · Internet search, advertising and cloud computing technology ⁽¹⁾ | · Wireless Infrastructure and User Equipment Technology ⁽¹⁾ |
| · MIPI DSI technology ⁽¹⁾⁽²⁾ | |

(1) Licensing and enforcement program generating revenue in fiscal year 2020

(2) Licensing and enforcement program generating revenue in fiscal year 2019

Revenues from one or more of our patents or patent portfolios may be significant in a specific reporting period, and may be significant to our licensing and enforcement business as a whole.

Summary of Results of Operations - For Fiscal Years 2020 and 2019

	2020	2019	\$ Change	% Change
	(In thousands, except percentage change values)			
Revenues	\$ 29,782	\$ 11,246	\$ 18,536	165%
Operating costs and expenses	49,300	34,664	14,636	42%
Operating loss	(19,518)	(23,418)	3,900	(17%)
Other income (expense), net	131,803	4,465	127,338	(2852%)
Income (loss) before provision for income taxes	112,285	(18,953)	131,238	692%
Income tax benefit	1,159	1,824	(665)	(36%)
Net income (loss) attributable to Acacia Research Corporation	113,444	(17,115)	130,559	763%

Overview - Fiscal Year 2020 compared with Fiscal Year 2019

- Revenues increased \$18.5 million, or 165% to \$29.8 million, primarily due to an increase in revenues from the new agreements executed during the year. Refer to “*Investments in Patent Portfolios*” below for additional information regarding the impact of portfolio acquisition trends on current and future licensing and enforcement related revenues.
- Income before provision for income taxes was \$112.3 million for fiscal year 2020, as compared to a loss of \$19.0 million for fiscal year 2019. The net change was primarily comprised of the change in revenues described above and other changes in operating expenses and other income and expenses as follows:
 - Inventor royalties and contingent legal fees, on a combined basis, increased \$9.2 million, or 167%, to \$14.8 million, primarily due to increase in revenues as describe above.
 - Litigation and licensing expenses-patents decreased \$2.1 million, or 27%, to \$5.7 million, due primarily to a net decrease in litigation support and third-party technical consulting expenses associated with ongoing litigation.
 - Amortization expense increased \$1.5 million, or 47%, to \$4.7 million, due to an increase in scheduled amortization resulting from the new portfolios acquired in 2019 and 2020.
 - General and administrative expenses, excluding non-cash stock compensation, increased \$7.5 million, or 49%, to \$22.8 million, primarily due to higher corporate, general and administrative costs related to legal and other business development expenses, including \$2.9 million in legal and advisory fees related to our LF Equity Income Fund Portfolio Investment.
 - General and administrative non-cash stock compensation expense increased \$0.6 million, from \$1.1 million to \$1.7 million, primarily due to stock grants issued to employees and the Board of Directors in 2019 and 2020.
 - Unrealized gain or loss on our equity investment in Veritone, decreased from an unrealized gain of \$9.9 million for the year ended December 31, 2019 to an unrealized gain of \$5.5 million for the year ended December 31, 2020. Realized gain or loss on our equity investment in Veritone increased from a loss of \$9.2 million for the year ended December 31, 2019 to a gain of \$8.2 million for the year ended December 31, 2020. Refer to Note 6 to the consolidated financial statements elsewhere herein for additional information regarding our investment in Veritone.

- Unrealized gain or loss from trading securities increased from an unrealized loss of \$0.1 million for the year ended December 31, 2019 to an unrealized gain of \$0.3 million for the year ended December 31, 2020.
- We incurred an unrealized gain of \$175.9 million from investment in the equity securities of the Portfolio Companies for the year ended December 31, 2020.
- Realized gain from sale of our trading securities increased \$5.2 million from a gain of \$2.2 million for the year ended December 31, 2019 to a gain of \$7.4 million for the year ended December 31, 2020. We also recognized a net gain of \$2.8 million related to returned prepaid investments and the sale of an equity security derivative. Refer to Notes 2 and 17 to the consolidated financial statements elsewhere herein for additional information regarding our investment in trading securities and LF Equity Income Fund Portfolio Investment.
- Interest income and other decreased \$2.6 million, from a net income of \$3.4 million for the year ended December 31, 2019 to a net income of \$0.8 million for the year ended December 31, 2020, mainly due to decrease in interest income from our investment in trading securities. Refer to Note 2 to the consolidated financial statements elsewhere herein for additional information regarding our investment in trading securities.
- We incurred interest expense of \$5.9 million for the year ended December 31, 2020 from the Notes issued in June 2020. Refer to Note 16 to the consolidated financial statements elsewhere herein for additional information regarding the Notes.
- Loss on foreign currency exchange increased to \$4.9 million for the year ended December 31, 2020, primarily from our transaction related to the LF Income Equity Fund securities. Refer to Note 17 to the consolidated financial statements elsewhere herein for additional information.
- Unrealized net gain or loss of from the fair value measurements of the Series A and Series B warrants and the embedded derivative decreased from a gain of \$4.5 million for the year ended December 31, 2019 to a loss of \$58.2 million for the year ended December 31, 2020. Refer to Notes 16 to the consolidated financial statements elsewhere herein for additional information regarding the Starboard Securities.
- Income tax benefit for fiscal years 2020 and 2019 primarily reflects the impact of foreign tax withholding refund incurred on revenue agreements executed with third-party licensees domiciled in foreign jurisdictions.

Revenues and Pretax Net Loss

Operating activities during the periods presented included the following:

	2020	2019	Change	
			\$ Change	% Change
Revenues (in thousands, except percentage change values)	\$ 29,782	\$ 11,246	\$ 18,536	165%
New agreements executed	17	7	10	143%
Licensing and enforcement programs generating revenues	9	6	3	50%
Licensing and enforcement programs with initial revenues	2	–	2	n/a
New patent portfolios	4	5	(1)	-20%

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

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

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

	2020	2019	Change	
			\$ Change	% Change
	(In thousands, except percentage change values)			
Income (loss) before provision for income taxes	\$ 112,285	\$ (18,953)	\$ 131,238	692%

Cost of Revenues

Inventor Royalties, Contingent Legal Fees Expense and Other Patent Acquisition Costs. The economic terms of patent portfolio related partnering agreements and contingent legal fee arrangements, if any, including royalty obligations, if any, royalty rates, contingent fee rates and other terms and conditions, vary across the patent portfolios owned or controlled by our operating subsidiaries. In certain instances, we have invested in certain patent portfolios without future inventor royalty obligations. These costs fluctuate period to period, based on the amount of revenues recognized each period, the terms and conditions of revenue agreements executed each period and the mix of specific patent portfolios with varying economic terms, conditions and obligations generating revenues each period.

	2020	2019	Change	
			\$ Change	% Change
	(In thousands, except percentage change values)			
Inventor royalties	\$ 7,349	\$ 4,944	\$ 2,405	49%
Contingent legal fees	7,419	591	6,828	1155%

Litigation and Licensing Expenses - Patents. Litigation and licensing expenses-patents include patent-related litigation, enforcement and prosecution costs incurred by external patent attorneys engaged on an hourly basis and the out-of-pocket expenses incurred by law firms engaged on a contingent fee basis. Litigation and licensing expenses-patents also includes third-party patent research, development, prosecution, re-exam and inter partes reviews, consulting, and other costs incurred in connection with the licensing and enforcement of patent portfolios.

Litigation and licensing expenses-patents decreased for the periods presented due to a net decrease in litigation support, patent prosecution and litigation expenses associated with ongoing licensing and enforcement programs and an overall decrease in portfolio related enforcement activities. We expect patent-related legal expenses to continue to decrease based upon the overall decrease in portfolio related enforcement activities as we continue monetizing our existing patent assets. Refer to “*Investments in Patent Portfolios*” above for additional information regarding the impact of portfolio acquisition trends on licensing and enforcement activities and current and future licensing and enforcement related revenues.

Amortization of Patents. For the year ended December 31, 2020, amortization expense increased \$1.5 million, or 47%, as compared to the year ended December 31, 2019. These increases were due to our new patents acquired in 2019 and 2020.

	2020	2019	Change	
			\$ Change	% Change
(In thousands, except percentage change values)				
Litigation and licensing expenses - patents	\$ 5,683	\$ 7,803	\$ (2,120)	(27%)
Amortization of patents	4,681	3,194	1,487	47%

Operating Expenses

	2020	2019	Change	
			\$	%
(In thousands, except percentage change values)				
General and administrative expenses	\$ 22,814	\$ 15,301	\$ 7,513	49%
Non-cash stock compensation expense - G&A	1,662	1,075	587	55%
Total general and administrative expenses	<u>\$ 24,476</u>	<u>\$ 16,376</u>	<u>\$ 8,100</u>	<u>49%</u>

General and Administrative Expenses. General and administrative expenses include employee compensation and related personnel costs, including variable performance based compensation and non-cash stock compensation expenses, office and facilities costs, legal and accounting professional fees, public relations, marketing, stock administration, business development, state taxes based on gross receipts and other corporate costs. A summary of the main drivers of the change in general and administrative expenses for the periods presented is as follows:

	2020 vs. 2019
	(in thousands)
Personnel costs and board fees	\$ (146)
Variable performance-based compensation costs	2,461
Corporate, general and administrative costs	5,167
Non-cash stock compensation expense ⁽¹⁾	587
Non-recurring employee severance costs	(127)
Other expenses - impairment	158
Total change in general and administrative expenses	<u>\$ 8,100</u>

(1) - Refer to Note 9 in the accompany consolidated financial statements

Other Fiscal year 2020 and 2019 operating expenses included credits or expenses for court ordered attorney fees and settlement and contingency accruals (\$0.3) million and \$1.8 million, respectively.

Other Income (Expense)

Our equity investments in Veritone and the Portfolio Companies are recorded at fair value at each balance sheet date. Results for fiscal year 2020 included unrealized gain on our equity investment in Veritone totaling \$5.5 million and realized gain of \$8.2 million. Results for fiscal year 2019 included unrealized gain on our equity investment in Veritone totaling \$9.9 million and realized loss of \$9.2 million.

For the year ended December 31, 2020, we recognized a realized loss of \$3.9 million from our sales of public securities of the Portfolio Companies. We recognized a net gain of \$2.8 million related to returned prepaid investments and the sale of an equity security derivative. We also recognized a foreign exchange loss of \$4.8 million from our transaction related to the LF Income Equity Fund securities. For the year ended December 31, 2020, we recorded \$175.9 million of unrealized gain related to the equity securities of the Portfolio Companies. Refer to Notes 2 and 17 to the consolidated financial statements elsewhere herein for additional information regarding our investment in trading securities and LF Equity Income Fund Portfolio Investment.

Income Taxes

	2020	2019
Income taxes (in thousands)	\$ 1,159	\$ 1,824
Effective tax rate	1%	(10%)

Our effective tax rates for fiscal year 2020 and 2019, were primarily comprised of foreign taxes withheld and refunded on revenue agreements with licensees in foreign jurisdictions, state taxes, and the impact of full valuation allowances recorded for net operating loss (2020 and 2019) and foreign tax credit related tax assets generated in those periods due to uncertainty regarding future realization. Foreign taxes withheld and refunded related to revenue agreements executed with third-party licensees domiciled in certain foreign jurisdictions for fiscal year 2020 and 2019 totaled (\$1.4) million and (\$1.9) million, respectively.

Inflation

Inflation has not had a significant impact on us or any of our subsidiaries in the current or prior periods.

Liquidity and Capital Resources

General

Our primary sources of liquidity are cash and cash equivalents on hand generated from our operating activities. Our management believes that our cash and cash equivalent balances and anticipated cash flows from operations will be sufficient to meet our cash requirements through at least March 2022 and for the foreseeable future. We may, however, encounter unforeseen difficulties that may deplete our capital resources more rapidly than anticipated, including those set forth under Item 1A, "Risk Factors", above. Any efforts to seek additional funding could be made through issuances of equity or debt, or other external financing. However, additional funding may not be available on favorable terms, or at all. The capital and credit markets have experienced extreme volatility and disruption in recent years, and the volatility and impact of the disruption may continue. At times during this period, the volatility and disruption has reached unprecedented levels. In several cases, the markets have exerted downward pressure on stock prices and credit capacity for certain issuers, and the commercial paper markets may not be a reliable source of short-term financing for us. If we fail to obtain additional financing when needed, we may not be able to execute our business plans and our business, conducted by our operating subsidiaries, may suffer.

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

Cash, Cash Equivalents, Trading Securities, Restricted Cash and Investments

Our consolidated cash, cash equivalents, trading securities, and restricted cash totaled \$309.6 million at December 31, 2020, compared to \$203.3 million at December 31, 2019. The net change in cash, cash equivalents and restricted cash for the periods presented was comprised of the following:

	2020	2019
	(In thousands)	
Net cash provided by (used in):		
Operating activities	\$ (19,620)	\$ (2,308)
Investing activities	18,598	(68,063)
Financing activities	109,209	33,921
Increase (decrease) in cash and cash equivalents and restricted cash	<u>\$ 108,187</u>	<u>\$ (36,450)</u>

Cash Flows from Operating Activities. Cash receipts from licensees totaled \$29.2 million and \$44.0 million in fiscal years 2020 and 2019, respectively. The fluctuations in cash receipts for the periods presented primarily reflects the corresponding fluctuations in revenues recognized during the same periods, as described above, and the related timing of payments received from licensees. Cash outflows from operations totaled \$48.8 million and \$46.3 million in fiscal years 2020 and 2019, respectively. The fluctuations in cash outflows for the periods presented reflects the fluctuations in revenue-related inventor royalties and contingent legal fees and other operating costs and expenses during the same periods, as discussed above, and the impact of the timing of payments to inventors, attorneys and other vendors.

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

	2020	2019
	(In thousands)	
Patent acquisition	\$ (13,780)	\$ (4,420)
Sale of investment at fair value ⁽¹⁾	12,409	6,628
(Purchase) Sale of other investments ⁽¹⁾	–	2,000
Net sale (purchase) of trading securities	300,840	(72,088)
Acquisition of LF Equity Income Fund equity securities	(280,263)	–
Distributions to noncontrolling interests in operating subsidiary	(409)	–
Purchases of property and equipment	(199)	(183)
Net cash provided by (used in) investing activities	<u>\$ 18,598</u>	<u>\$ (68,063)</u>

(1) Refer to Note 6 to the consolidated financial statements elsewhere herein for additional information

Investment in Veritone. During the three months ended March 31, 2020, Acacia sold all remaining 298,450 shares Veritone common stock and recorded a realized loss of \$3.3 million. In fiscal year 2019, Acacia sold 1,121,071 shares of Veritone common stock and recorded a realized loss of \$9.2 million on the sale. During the year ended December 31, 2020, Acacia exercised 963,712 warrants, and recorded a realized gain of \$11.5 million. Refer to Note 6 to the consolidated financial statements elsewhere herein for additional information regarding our investment with Veritone.

Investment in the Portfolio Companies. For the year ended December 31, 2020, we recognized a realized loss of \$3.9 million from our sales of public securities of the Portfolio Companies. We recognized a net gain of \$2.8 million related to returned prepaid investments and the sale of an equity security derivative. We also recognized a foreign exchange loss of \$4.8 million from our transaction related to the LF Income Equity Fund securities. For the year ended December 31, 2020, we recorded \$175.9 million of unrealized gain related to the equity securities of the Portfolio Companies. Refer to Notes 2 and 17 to the consolidated financial statements elsewhere herein for additional information regarding our investment in trading securities and LF Equity Income Fund Portfolio Investment.

Cash Flows from Financing Activities. Cash flows from financing activities and related changes included the following for the periods presented:

	<u>2020</u>	<u>2019</u>
	(In thousands)	
Repurchase of common stock	\$ (3,998)	\$ —
Dividend on Series A Redeemable Convertible Preferred Stock	(1,382)	—
Issuance of Senior Secured Notes, net of lender fee	110,437	—
Senior Secured Notes issuance costs paid to other parties	(496)	—
Issuance of Series A redeemable convertible preferred stock and Series A warrants, net of issuance costs	—	33,842
Issuance of Series B warrants	4,600	—
Proceeds from exercise of stock options	48	79
Net cash provided by financing activities	<u>\$ 109,209</u>	<u>\$ 33,921</u>

Stock Repurchase Program. On August 5, 2019, our board of directors approved a stock repurchase program, which authorized the purchase of up to \$10.0 million of the Company's common stock through open market purchases, through block trades, through 10b5-1 plans, or by means of private purchases, from time to time, through July 31, 2020. In determining whether or not to repurchase any shares of Acacia's common stock, Acacia's board of directors consider such factors as the impact of the repurchase on Acacia's cash position, as well as Acacia's capital needs and whether there is a better alternative use of Acacia's capital. Acacia has no obligation to repurchase any amount of its common stock under the Stock Repurchase Program. Repurchases to date were made in the open market in compliance with applicable SEC rules. The authorization to repurchase shares presented an opportunity to reduce the outstanding share count and enhance stockholder value. The repurchased shares are expected to be retired.

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

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

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

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

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

Refer to Notes 16, 17 and 19 to our notes to consolidated financial statements for more information related to the Starboard Securities.

Working Capital

The primary components of working capital are cash and cash equivalents, trading securities, accounts receivable, prepaid expenses, accounts payable, accrued expenses, and royalties and contingent legal fees payable. Working capital at December 31, 2020 was \$332.9 million, compared to \$160.1 million at December 31, 2019.

Consolidated accounts receivable from licensees was \$0.5 million at December 31, 2020 and December 31, 2019. Accounts receivable balances fluctuate based on the timing, magnitude and payment terms associated with revenue agreements executed during the year, and the timing of cash receipts on accounts receivable balances recorded in previous periods. Two licensees individually represented approximately 62% and 21%, respectively, of accounts receivable at December 31, 2020. Two licensees individually represented approximately 70% and 17%, respectively, of accounts receivable at December 31, 2019.

Accounts payable and accrued expenses decreased to \$7.0 million at December 31, 2020, from \$9.5 million at December 31, 2019.

Consolidated royalties and contingent legal fees payable was \$2.2 million at December 31, 2020 and December 31, 2019. Royalties and contingent legal fees payable balances fluctuate based on the magnitude and timing of the execution of related license agreements, the timing of cash receipts for the related license agreements, and the timing of payment of current and prior period royalties and contingent legal fees payable to inventor and outside attorneys, respectively.

All of accounts receivable from licensees at December 31, 2020 are scheduled to be collected in the first and second quarter of 2021, in accordance with the terms of the related underlying license agreements. The majority of royalties and contingent legal fees payable are scheduled to be paid through the third quarter of 2021 in accordance with the underlying contractual arrangements.

Critical Accounting Policies

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

We believe that, of the significant accounting policies discussed in Note 2 to our notes to consolidated financial statements, the following accounting policies require our most difficult, subjective or complex judgments:

- revenue recognition;
- stock-based compensation expense;
- valuation of long-lived and intangible assets;
- valuation of Series A Warrants, Series B Warrants and embedded derivatives;
- valuation of private equity investment securities; and
- accounting for income taxes.

We discuss below the critical accounting assumptions, judgments and estimates associated with these policies. Historically, our assumptions, judgments and estimates relative to our critical accounting policies have not differed materially from actual results. For further information on our critical accounting policies, refer to Note 2 to the notes to consolidated financial statements included herein.

Revenue Recognition

As described below, significant management judgment must be made and used in connection with the revenue recognized in any accounting period. Material differences may result in the amount and timing of revenue recognized or deferred for any period, if management made different judgments.

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

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

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

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

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

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

For fiscal years 2020 and 2019, the majority of our revenue agreements provided for the payment to us of one-time, paid-up license fees in consideration for the grant of certain IP rights for patented technology rights owned by our operating subsidiaries. These rights were primarily granted on a perpetual basis, extending until the expiration of the underlying patents. Pursuant to the terms of these agreements, our operating subsidiaries have no further obligation with respect to the grant of the non-exclusive licenses, covenants-not-to-sue, releases, and other deliverables, including no express or implied obligation on our operating subsidiaries' part to maintain or upgrade the technology, or provide future support or services. The agreements provided for the grant of the licenses, covenants-not-to-sue, releases, and other significant contractual performance obligations upon execution of the agreement. As such, the earnings process was determined to be complete and revenue was recognized upon the execution of the agreements. Historically, term license agreements have not been a material component of our operating revenues, with the majority of license agreements being paid-up, perpetual license agreements.

Stock-based Compensation Expense

Equity Based Awards. Stock-based compensation payments to employees and non-employee directors are recognized as expense in the consolidated statements of operations. The compensation cost for all stock-based awards is measured at the grant date, based on the fair value of the award (determined using a Black-Scholes option pricing model for stock options and intrinsic value on the date of grant for non-vested restricted stock), and is recognized as an expense over the employee's requisite service period (generally the vesting period of the equity award). Determining the fair value of stock-based awards at the grant date requires significant estimates and judgments, including estimating the market price volatility of our common stock, future employee stock option exercise behavior and requisite service periods. We account for forfeitures of awards as they occur.

During the year ended December 31, 2019, the Company granted restricted stock units with market-based vesting conditions. The restricted stock units with market-based vesting conditions vest based upon the Company achieving specified stock price targets over a three-year period. The effect of a market-based vesting condition is reflected in the estimate of the grant-date fair value of the options utilizing a Monte Carlo valuation technique. Refer to Notes 9 to our notes to consolidated financial statements for more information related to restricted stock units granted.

Valuation of Long-lived and Intangible Assets

Patent Portfolio Impairment Testing. We review long-lived assets and intangible assets for potential impairment annually (quarterly for patents) and when events or changes in circumstances indicate the carrying amount of an asset may not be recoverable. In the event the expected undiscounted future cash flows resulting from the use of the asset is less than the carrying amount of the asset, an impairment loss is recorded equal to the excess of the asset's carrying value over its fair value. If an asset is determined to be impaired, the loss is measured based on quoted market prices in active markets, if available. If quoted market prices are not available, the estimate of fair value is based on various valuation techniques, including a discounted value of estimated future cash flows.

We did not record any patent portfolio impairment charges for the fiscal years ended December 31, 2020 and December 31, 2019.

Valuation of Series A Warrants

The fair value of the Series A warrants (the "Series A Warrants") is estimated using a Black-Scholes option-pricing model. The fair value of the Series A Warrants as of December 31, 2020 was estimated based on the following assumptions: volatility of 29 percent, risk-free rate of 0.62 percent, term of 6.79 years and a dividend yield of 0 percent. Refer to Notes 16 for additional information.

Valuation of Series B Warrants

The fair value of the Series B Warrants is estimated using Monte Carlo valuation technique. The fair value of the Series B Warrants as of December 31, 2020 was estimated based on event probabilities of future exercise scenarios and the following weighted-average assumptions: (1) volatility of 29 percent, risk-free rate of 0.63 percent, term of 6.87 years, a dividend yield of 0 percent, and a discount for lack of marketability of 10 percent, and (2) volatility of 50 percent, risk-free rate of 0.12 percent, term of 1.65 years and a dividend yield of 0 percent, and a discount for lack of marketability of 10 percent. Refer to Notes 16 for additional information.

Valuation of Embedded Derivatives

Embedded derivatives that are required to be bifurcated from their host contract are evaluated and valued separately from host instrument. A binomial lattice framework is used to estimate the fair value of the embedded derivative put option, conversion option, call option, and contingent dividend rate feature in the Series A Preferred Stock issued by the Company in 2019. The binomial model utilizes the Tsiveriotis and Fernandes ("TF") implementation in which a convertible instrument is split into two separate components: a cash-only component which is subject to the selected risk-adjusted discount rate and an equity component which is subject only to the risk-free rate. The model considers the (i) implied volatility of the value of our common stock, (ii) appropriate risk-free interest rate, (iii) credit spread, (iv) dividend yield, (v) dividend accrual (and a step-up in rates), and (vi) event probabilities of the various conversion and redemption scenarios.

The implied volatility of the Company's common stock is estimated based on a haircut applied to the historical volatility. A volatility haircut is a concept used to describe a commonly observed occurrence in which the volatility implied by market prices involving options, warrants, and convertible debt is lower than historical actual realized volatility. The assumed base case term used in the valuation model is the period remaining until November 15, 2027 (the maturity date). The risk-free interest rate is based on the yield on the U.S. Treasury with a remaining term equal to the expected term of the conversion and early redemption options. The significant assumptions utilized in the Company's valuation of the embedded derivative at December 31, 2020 are as follows: volatility of 29 percent, risk-free rate of 0.62 percent, a credit spread of 19 percent and a dividend yield of 0 percent. Refer to Notes 16 for additional information.

Valuation of Investment Securities – Private Equity

As the private company equity securities do not have readily determinable fair value, we have elected to report them under the measurement alternative. They are reported at cost minus impairment, if any, plus or minus changes resulting from observable price changes in orderly transactions for an identical or similar investment of the same issuer. The fair values of the private company securities were estimated based on recent financing transactions and secondary market transactions and factoring in any adjustments for illiquidity or preference of these securities. Changes in fair value are reported in the consolidated statements of operations in other income (expense).

Accounting for Income Taxes

As part of the process of preparing our consolidated financial statements, we are required to estimate our income taxes in each of the jurisdictions in which we operate. This process involves the estimating of our actual current tax exposure together with assessing temporary differences resulting from differing treatment of items. These differences result in deferred tax assets and liabilities, which are included within our consolidated balance sheets. We must then assess the likelihood that our deferred tax assets will be recovered from future taxable income and to the extent we believe that recovery is not likely, we must establish a valuation allowance. To the extent we establish a valuation allowance or increase this allowance in a period, we must include an expense within the tax provision in the consolidated statements of operations.

Significant management judgment is required in determining our provision for income taxes, our deferred tax assets and liabilities and our valuation allowance. Due to uncertainties related to our ability to utilize certain deferred tax assets in future periods, we have recorded a full valuation allowance against our net deferred tax assets as of December 31, 2020 and 2019. These assets primarily consist of foreign tax credits, capital loss carryforwards and net operating loss carryforwards.

In assessing the need for a valuation allowance, management has considered both the positive and negative evidence available, including but not limited to, estimates of future taxable income and related probabilities, estimates surrounding the character of future income and the timing of realization, consideration of the period over which our deferred tax assets may be recoverable, our recent history of net income and prior history of losses, projected future outcomes, industry and market trends and the nature of existing deferred tax assets. In management's estimate, any positive indicators, including forecasts of potential future profitability of our businesses, are outweighed by the uncertainties surrounding our estimates and judgments of potential future taxable income, primarily due to uncertainties surrounding the timing of realization of future taxable income and the character of such income in particular future periods (i.e. foreign or domestic). In the event that actual results differ from these estimates or we adjust these estimates should we believe we would be able to realize these deferred tax assets in the future, an adjustment to the valuation allowance would increase income in the period such determination was made.

Any changes in the judgments, assumptions and estimates associated with our analysis of the need for a valuation allowance in any future periods could materially impact our financial position and results of operations in the periods in which those determinations are made.

Off-Balance Sheet Arrangements

We have not entered into off-balance sheet financing arrangements.

Uncertain Tax Positions. At December 31, 2020, we had total unrecognized tax benefits of approximately \$731,000. A noncurrent liability of \$85,000 related to unrecognized tax benefits primarily associated with state taxes was written off during 2020. No interest and penalties have been recorded for the unrecognized tax benefits as of December 31, 2020. If recognized, approximately \$731,000 would impact our effective tax rate. We do not expect that the liability for unrecognized tax benefits will change significantly within the next 12 months.

Recent Accounting Pronouncements

Refer to Note 13 to our notes to consolidated financial statements included elsewhere herein.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

The primary objective of our short-term investment activities is to preserve principal while concurrently maximizing the income we receive from our trading securities without significantly increasing risk. Some of the securities that we invest in may be subject to interest rate risk and/or market risk. This means that a change in prevailing interest rates, with respect to interest rate risk, or a change in the value of the United States equity markets, with respect to market risk, may cause the principal amount or market value of the trading securities to fluctuate. To minimize these risks in the future, we intend to maintain our portfolio of cash equivalents and trading securities in a variety of securities, including commercial paper, money market funds, high-grade corporate bonds, government and non-government debt securities, certificates of deposit and equity securities. In general, money market funds are not subject to market risk because the interest paid on such funds fluctuates with the prevailing interest rate. Accordingly, a 100-basis point increase in interest rates or a 10% decline in the value of the United States equity markets would not be expected to have a material impact on the value of such money market funds. Declines in interest rates over time will, however, reduce our interest income.

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

Investment Risk

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

As of December 31, 2020 and December 31, 2019, the carrying value of our common stock and warrants in public and private companies was \$285.8 million and \$18.6 million, respectively.

We record our common stock and warrant investments in publicly traded companies at fair value, which are subject to market price volatility. As of December 31, 2020, a hypothetical 10% adverse change in the market price of our investments in publicly traded common stock would have resulted in a decrease of approximately \$0.4 million in the fair value of our equity warrant investments in Veritone and a decrease of approximately \$10.9 million in our other equity investments. We evaluate our equity and equity warrant investments in private companies for impairment when events and circumstances indicate that the decline in fair value of such assets below the carrying value is other-than temporary.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

The financial statements and related financial information required to be filed hereunder are indexed under Item 15 of this report and are incorporated herein by reference.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

ITEM 9A. CONTROLS AND PROCEDURES

(a) Conclusion Regarding the Effectiveness of Disclosure Controls and Procedures

We maintain disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) that are designed to ensure that information required to be disclosed in our reports under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and that this information is accumulated and communicated to management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow for timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and management is required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Our management, with the participation of our Chief Executive Officer and our Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures as of December 31, 2020. Based on the evaluation of our disclosure controls and procedures as of December 31, 2020, our Chief Executive Officer and Chief Financial Officer concluded that, as of such date, our disclosure controls and procedures were effective at the reasonable assurance level.

(b) Management’s Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate “internal control over financial reporting,” as defined in Rule 13a-15(f) under the Exchange Act. Our management conducted an assessment of the effectiveness of our internal control over financial reporting as of December 31, 2020 based on the criteria set forth in the Internal Control Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on the assessment, our management has concluded that our internal control over financial reporting was effective as of December 31, 2020.

(c) Exemption from Attestation Report of Independent Registered Public Accounting Firm

This Report does not include an attestation report of our independent registered public accounting firm regarding internal control over financial reporting. Management’s report was not subject to attestation by our independent registered public accounting firm pursuant to the rules of the SEC that permit us to provide only Management’s Report because we are a non-accelerated filer.

(d) Changes in Internal Controls over Financial Reporting

There were no changes in our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15(d) and 15d-15(d) of the Exchange Act that occurred during the quarter ended December 31, 2020 that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

ITEM 9B. OTHER INFORMATION

None.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

Except as provided below, in accordance with General Instruction G(3) to Form 10-K, certain information required by this Item is incorporated herein by reference to our definitive proxy statement for our 2021 annual meeting of stockholders to be filed with the SEC no later than April 30, 2021.

Code of Conduct.

We have adopted a Code of Conduct that applies to all employees, including our Chief Executive Officer and Chief Financial Officer and any persons performing similar functions. Our Code of Conduct is provided on our internet website at www.acaciaresearch.com.

ITEM 11. EXECUTIVE COMPENSATION

In accordance with General Instruction G(3) to Form 10-K, the information required by this Item is incorporated herein by reference to our definitive proxy statement for our 2021 annual meeting of stockholders to be filed with the SEC no later than April 30, 2021.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

In accordance with General Instruction G(3) to Form 10-K, certain information required by this Item is incorporated herein by reference to our definitive proxy statement for our 2021 annual meeting of stockholders to be filed with the SEC no later than April 30, 2021.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

In accordance with General Instruction G(3) to Form 10-K, the information required by this Item is incorporated herein by reference to our definitive proxy statement for our 2021 annual meeting of stockholders to be filed with the SEC no later than April 30, 2021.

ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

In accordance with General Instruction G(3) to Form 10-K, the information required by this Item is incorporated herein by reference to our definitive proxy statement for our 2021 annual meeting of stockholders to be filed with the SEC no later than April 30, 2021.

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES

(a) The following documents are filed as part of this report.

(1) Financial Statements

	Page
Acacia Research Corporation Consolidated Financial Statements	
Reports of Independent Registered Public Accounting Firm	F-1
Consolidated Balance Sheets as of December 31, 2020 and 2019	F-2
Consolidated Statements of Operations for the Years Ended December 31, 2020 and 2019	F-3
Consolidated Statements of Series A Redeemable Convertible Preferred Stock and Stockholders' Equity for the Years Ended December 31, 2020 and 2019	F-4
Consolidated Statements of Cash Flows for the Years Ended December 31, 2020 and 2019	F-6
Notes to Consolidated Financial Statements	F-7

(2) Financial Statement Schedules

Financial statement schedules are omitted because they are not applicable or the required information is shown in the Financial Statements or the Notes thereto.

(3) Exhibits

Refer to Item 15(b) below.

(b) Exhibits. The following exhibits are either filed herewith or incorporated herein by reference:

Exhibit Number	Description
2.1**	Agreement and Plan of Merger, dated November 22, 2011, by and among Acacia Research Group LLC, Apollo Patent Corp., Adaptix, Inc., and Baker Communications Fund II (QP), L.P., solely in its capacity as representative for the shareholders of Adaptix, Inc. (incorporated by reference to the Current Report on Form 8-K/A filed on January 19, 2012)
2.2	Transaction Agreement, dated as of June 4, 2020, between LF Equity Income Fund and Acacia Research Corporation (incorporated by reference to the Current Report on Form 8-K filed on June 10, 2020)
3.1	Amended and Restated Certificate of Incorporation (as updated through February 18, 2020 and currently in effect) (incorporated by reference to the Annual Report on Form 10-K for the year ended December 31, 2019, filed on March 16, 2020)
3.2	Amended and Restated Certificate of Designations, Preferences and Rights of Series A Convertible Preferred Stock, as filed with the Delaware Secretary of State on January 7, 2020 (incorporated by reference to Appendix B to the Definitive Proxy Statement on Schedule 14A filed on January 17, 2020)
3.3	Second Amended and Restated Bylaws (incorporated by reference to the Quarterly Report on Form 10-Q for the period ended June 30, 2020, filed on August 20, 2020)
4.1	Tax Benefits Preservation Plan, dated as of March 16, 2019, by and between Acacia Research Corporation and Computershare Inc., as Rights Agent, which includes the Form of Certificate of Designation, Preferences and Rights of Participating Preferred Stock as Exhibit A, the Form of Rights Certificate as Exhibit B and the Summary of Terms as Exhibit C (incorporated by reference to the Annual Report on Form 10-K for the year ended December 31, 2018, filed on March 15, 2019)
4.2	Description of Acacia Research Corporation Capital Stock (incorporated by reference to the Annual Report on Form 10-K for the year ended December 31, 2019, filed on March 16, 2020)

- 4.3 [Form of Senior Secured Note](#) (incorporated by reference to the Current Report on Form 8-K filed on July 7, 2020)
- 4.4 [Form of Series A Warrant to Purchase Common Stock](#) (incorporated by reference to Appendix C to the Definitive Proxy Statement on Schedule 14A filed on January 17, 2020)
- 4.5 [Form of Series B Warrant to Purchase Common Stock](#) (incorporated by reference to Appendix D to the Definitive Proxy Statement on Schedule 14A filed on January 17, 2020)
- 10.1 [Form of Indemnification Agreement](#) (incorporated by reference to the Annual Report on Form 10-K for the year ended December 31, 2019, filed on March 16, 2020)
- 10.2* [Acacia Research Corporation Amended and Restated Executive Severance Policy](#) (incorporated by reference to the Annual Report on Form 10-K for the year ended December 31, 2008, filed on February 26, 2009)
- 10.3 [Form of Purchase Agreement](#) (incorporated by reference to the Current Report on Form 8-K filed on February 16, 2012)
- 10.4* [2013 Acacia Research Corporation Stock Incentive Plan](#) (incorporated by reference to Annex A to the Definitive Proxy Statement on Schedule 14A filed on April 24, 2013)
- 10.5* [Form of Stock Issuance Agreement under the 2013 Acacia Research Corporation Stock Incentive Plan](#) (incorporated by reference to the Current Report on Form 8-K on May 22, 2013)
- 10.6* [2016 Acacia Research Corporation Stock Incentive Plan](#) (incorporated by reference to the Quarterly Report on Form 10-Q for the period ended June 30, 2016, filed on August 9, 2016)
- 10.7* [Form of Stock Option Agreement under the 2016 Acacia Research Corporation Stock Incentive Plan](#) (incorporated by reference to the Annual Report on Form 10-K for the year ended December 31, 2016, filed on March 10, 2017)
- 10.8* [Form of Stock Issuance Agreement under the 2016 Acacia Research Corporation Stock Incentive Plan](#) (incorporated by reference to the Annual Report on Form 10-K for the year ended December 31, 2016, filed on March 10, 2017)
- 10.9* [Form of Profits Interest Agreement Under AIP Operation LLC Profits Interest Plan](#) (incorporated by reference to the Quarterly Report on Form 10-Q for the period ended March 31, 2017, filed on May 10, 2017)
- 10.10 [Investment Agreement dated August 15, 2016, by and between Acacia Research Corporation and Veritone, Inc.](#) (incorporated by reference to the Current Report on Form 8-K filed on March 16, 2017)
- 10.11 [Secured Promissory Note dated August 15, 2016, issued by Veritone, Inc. to Acacia Research Corporation](#) (incorporated by reference to the Current Report on Form 8-K filed on March 16, 2017)
- 10.12 [Primary Common Stock Purchase Warrant dated August 15, 2016, issued by Veritone, Inc. to Acacia Research Corporation, together with form of 10% Warrant to Purchase Common Stock](#) (incorporated by reference to the Current Report on Form 8-K filed on March 16, 2017)
- 10.13 [Common Stock Purchase Warrant dated August 15, 2016, issued by Veritone, Inc. to Acacia Research Corporation](#) (incorporated by reference to the Current Report on Form 8-K filed on March 16, 2017)
- 10.14 [Common Stock Purchase Warrant dated November 25, 2016, issued by Veritone, Inc. to Acacia Research Corporation](#) (incorporated by reference to the Current Report on Form 8-K filed on March 16, 2017)
- 10.15 [Common Stock Purchase Warrant dated November 25, 2016, issued by Veritone, Inc. to Acacia Research Corporation](#) (incorporated by reference to the Current Report on Form 8-K filed on March 16, 2017)
- 10.16* [Employment Agreement, dated June 19, 2020, by and between Acacia Research Group, LLC and Marc W. Booth](#) (incorporated by reference to the Current Report on Form 8-K filed on June 25, 2020)
- 10.17* [Separation Agreement and General Release of Claims, effective August 10, 2018, by and between Acacia Research Group, LLC and Clayton J. Haynes](#) (incorporated by reference to the Current Report on Form 8-K filed on August 16, 2018)
- 10.18* [Consulting Agreement, effective August 10, 2018, by and between Acacia Research Corporation and Clayton J. Haynes](#) (incorporated by reference to the Current Report on Form 8-K filed on August 16, 2018)
- 10.19* [Separation Agreement and General Release of Claims, effective August 10, 2018, by and between Acacia Research Group, LLC and Edward J. Treska](#) (incorporated by reference to the Current Report on Form 8-K filed on August 16, 2018)
- 10.20* [Consulting Agreement, effective August 10, 2018, by and between Acacia Research Corporation and Edward J. Treska](#) (incorporated by reference to the Current Report on Form 8-K filed on August 16, 2018)

- 10.21* [Separation Agreement and General Release of Claims, dated February 12, 2019, by and between Acacia Research Group, LLC and Kirsten Hoover](#) (incorporated by reference to the Current Report on Form 8-K filed on February 13, 2019)
- 10.22* [Employment Agreement, dated September 3, 2019, by and among Acacia Research Group LLC, Acacia Research Corporation and Clifford Press](#) (incorporated by reference to the Quarterly Report on Form 10-Q for the period ended September 30, 2019, filed on November 12, 2019)
- 10.23* [Employment Agreement, dated September 3, 2019, by and among Acacia Research Group LLC, Acacia Research Corporation and Alfred Tobia](#) (incorporated by reference to the Quarterly Report on Form 10-Q for the period ended September 30, 2019, filed on November 12, 2019)
- 10.24* [Employment Agreement, dated June 4, 2020, by and between Acacia Research Group, LLC and Richard Rosenstein](#) (incorporated by reference to the Current Report on Form 8-K filed on June 4, 2020)
- 10.25* [Employment Agreement, dated June 4, 2020, by and between Acacia Research Group, LLC and Meredith Simmons](#) (incorporated by reference to the Current Report on Form 8-K filed on June 4, 2020)
- 10.26* [Employment Agreement, effective March 16, 2021, by and between Acacia Research Group, LLC and Jason Soncini](#) (incorporated by reference to the Current Report on Form 8-K filed on March 22, 2021)
- 10.27 [Securities Purchase Agreement dated November 18, 2019, by and among Acacia Research Corporation, Starboard Value LP and the investors listed on the Schedule of Buyers attached thereto](#) (incorporated by reference to Appendix A to the Definitive Proxy Statement on Schedule 14A filed on January 17, 2020)
- 10.28 [Supplemental Agreement, dated as of June 4, 2020, between Starboard Value, L.P. and Acacia Research Corporation](#) (incorporated by reference to the Current Report on Form 8-K filed on June 10, 2020)
- 10.29 [Exchange Agreement, dated June 30, 2020, among Acacia Research Corporation, Merton Acquisition HoldCo LLC and Starboard Value LP](#) (incorporated by reference to the Current Report on Form 8-K filed on July 7, 2020)
- 10.30 [Stock Pledge Agreement, dated June 30, 2020, entered into by Acacia Research Group LLC, Advanced Skeletal Innovations LLC and Saint Lawrence Communications LLC in favor of Starboard Value Intermediate Fund LP, as collateral agent](#) (incorporated by reference to the Current Report on Form 8-K filed on July 7, 2020)
- 10.31 [Guaranty, dated June 30, 2020, entered into by the Guarantors \(as defined therein\) in favor of the Holders \(as defined therein\)](#) (incorporated by reference to the Current Report on Form 8-K filed on July 7, 2020)
- 10.32 [Release of Security Interests in Patents, dated June 30, 2020, between the Releasees \(as defined therein\) and Starboard Value Intermediate Fund LP, as collateral agent](#) (incorporated by reference to the Current Report on Form 8-K filed on July 7, 2020)
- 10.33 [Registration Rights Agreement dated November 18, 2019, by and among Acacia Research Corporation and the investors listed on the Schedule of Buyers attached thereto](#) (incorporated by reference to Appendix F to the Definitive Proxy Statement on Schedule 14A filed on January 17, 2020)
- 10.34 [Governance Agreement dated November 18, 2019](#) and amended [January 7, 2020](#), by and among Acacia Research Corporation and the entities and natural persons set forth on the signature pages thereto (incorporated by reference to Appendix G to the Definitive Proxy Statement on Schedule 14A filed on January 17, 2020)
- 10.35 [Lease Agreement dated June 7, 2019, by and between Acacia Research Corporation and Jamboree Center 4 LLC](#) (incorporated by reference to the Annual Report on Form 10-K for the year ended December 31, 2019, filed on March 16, 2020)
- 21.1 [List of Subsidiaries](#)
- 23.1 [Consent of Independent Registered Public Accounting Firm](#)
- 24.1 [Power of Attorney](#) (included in the signature page hereto).
- 31.1† [Certification of Chief Executive Officer Pursuant to Rule 13a-14\(a\)/15d-14\(a\) of the Securities Exchange Act of 1934](#)
- 31.2† [Certification of Chief Financial Officer Pursuant to Rule 13a-14\(a\)/15d-14\(a\) of the Securities Exchange Act of 1934](#)
- 32.1 [Certification of Chief Executive Officer Pursuant to Rule 13a-14\(b\)/15d-14\(b\) of the Securities Exchange Act of 1934 and 18 U.S.C. Section 1350](#)
- 32.2 [Certification of Chief Financial Officer Pursuant to Rule 13a-14\(b\)/15d-14\(b\) of the Securities Exchange Act of 1934 and 18 U.S.C. Section 1350](#)
- 101 Interactive Data Files Pursuant to Rule 405 of Regulation S-T.

* The referenced exhibit is a management contract, compensatory plan or arrangement required to be filed as an exhibit to this Annual Report on Form 10-K pursuant to Item 15(c) of Form 10-K.

** Portions of this exhibit have been omitted pursuant to a request for confidential treatment under Rule 24-b-2 of the Securities Exchange Act of 1934, as amended. The omitted material has been separately filed with the Securities and Exchange Commission.

† The certifications attached as Exhibits 32.1 and 32.2 that accompany this Annual Report on Form 10-K are not deemed filed with the SEC and are not to be incorporated by reference into any filing of Acacia Research Corporation under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date of this Annual Report on Form 10-K, regardless of any general incorporation language contained in any filing.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Board of Directors and Stockholders
Acacia Research Corporation

Opinion on the financial statements

We have audited the accompanying consolidated balance sheets of Acacia Research Corporation (and subsidiaries) (the “Company”) as of December 31, 2020 and 2019, the related consolidated statements of operations, series A redeemable convertible preferred stock and stockholders’ equity, and cash flows for each of the two years in the period ended December 31, 2020, and the related notes (collectively referred to as the “financial statements”). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2020 and 2019, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2020, in conformity with accounting principles generally accepted in the United States of America.

Basis for opinion

These financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on the Company’s financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (“PCAOB”) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company’s internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical audit matter

The critical audit matter communicated below is a matter arising from the current period audit of the financial statements that was communicated or required to be communicated to the audit committee and that: (1) relates to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

Fair value measurements of the Series B Warrants and embedded derivative in the Series A Redeemable Convertible Preferred Stock.

As described further in Note 16 to the consolidated financial statements, the Company entered into a Securities Purchase Agreement with Starboard Value LP, pursuant to which the Company issued (i) Series A Redeemable Convertible Preferred Stock and (ii) Series A Warrants. The Securities Purchase Agreement also established terms of certain additional warrants, referred to as the Series B Warrants. The Series A Redeemable Convertible Preferred Stock contained certain features that required to be bifurcated and accounted for as a compound embedded derivative.

We identified the fair value measurements of the Series B Warrants and embedded derivatives in the Series A Redeemable Convertible Preferred Stock (together, “Series B Warrants and Series A Embedded Derivative Liabilities”) as a critical audit matter.

The principal considerations for our determination that the fair value measurement of the Series B Warrants and Series A Embedded Derivative Liabilities was a critical audit matter are as follows. There is limited observable market data available for the Series B Warrants and Series A Embedded Derivative Liabilities as they are complex financial instruments and, as such, the fair value measurement requires management to make complex judgments in order to identify and select the significant assumptions, which include the volatility and credit spread. In addition, the fair value measurements of the Series B Warrants and Series A Embedded Derivative Liabilities require the use of complex financial models, including Monte Carlo valuation techniques and binomial lattice models. As a result, obtaining sufficient appropriate audit evidence related to the fair value measurements required significant auditor subjectivity.

Our audit procedures related to the fair value measurements of the Series B Warrants and Series A Embedded Derivative Liabilities included the following among others. With the assistance of our firm valuation specialists, we evaluated the reasonableness of the Company’s valuation methodology and assumptions by: (1) comparing selected assumptions against available market data and historical amounts and (2) validating the mathematical accuracy of the models by developing an independent calculation and comparing to management’s concluded valuations.

GRANT THORNTON LLP
/s/ GRANT THORNTON LLP

We have served as the Company’s auditor since 2007.

Newport Beach, California
March 29, 2021

ACACIA RESEARCH CORPORATION
CONSOLIDATED BALANCE SHEETS
(In thousands, except share and per share information)

	<u>December 31, 2020</u>	<u>December 31, 2019</u>
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 165,546	\$ 57,359
Trading securities - debt	–	93,843
Trading securities - equity	109,103	17,140
Investment securities - private equity	143,257	–
Investment securities - equity method investments	30,673	–
Investment at fair value (Note 6)	2,752	1,500
Accounts receivable	506	511
Prepaid expenses and other current assets	5,832	2,912
Total current assets	<u>457,669</u>	<u>173,265</u>
Long-term restricted cash	35,000	35,000
Patents, net of accumulated amortization	16,912	7,814
Leased right-of-use assets	951	1,264
Other non-current assets	4,988	818
Total assets	<u>\$ 515,520</u>	<u>\$ 218,161</u>
LIABILITIES, REDEEMABLE CONVERTIBLE PREFERRED STOCK, AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 1,019	\$ 1,765
Accrued expenses and other current liabilities	3,707	7,265
Accrued compensation	2,265	507
Royalties and contingent legal fees payable	2,162	2,178
Senior Secured Notes Payable - short-term	115,663	–
Total current liabilities	<u>124,816</u>	<u>11,715</u>
Series A warrant liabilities	6,640	3,568
Series A embedded derivative liabilities	26,728	17,974
Series B warrant liabilities	52,341	–
Long-term lease liabilities	951	1,264
Other long-term liabilities	591	593
Total liabilities	<u>212,067</u>	<u>35,114</u>
Commitments and contingencies (Note 10)		
Series A redeemable convertible preferred stock, par value \$0.001 per share; stated value \$100 per share; 350,000 shares authorized, issued and outstanding as of December 31, 2020 and December 31, 2019, respectively; aggregate liquidation preference of \$35,000 as of December 31, 2020 and December 31, 2019, respectively	10,924	8,089
Stockholders' equity:		
Preferred stock, par value \$0.001 per share; 10,000,000 shares authorized; no shares issued or outstanding	–	–
Common stock, par value \$0.001 per share; 300,000,000 shares authorized; 49,279,453 and 50,370,987 shares issued and outstanding as of December 31, 2020 and December 31, 2019, respectively	49	50
Treasury stock, at cost, 4,604,365 and 2,919,828 shares as of December 31, 2020 and December 31, 2019, respectively	(43,270)	(39,272)
Additional paid-in capital	651,416	652,003
Accumulated deficit	(326,708)	(439,656)
Total Acacia Research Corporation stockholders' equity	<u>281,487</u>	<u>173,125</u>
Noncontrolling interests	11,042	1,833
Total stockholders' equity	<u>292,529</u>	<u>174,958</u>
Total liabilities, redeemable convertible preferred stock, and stockholders' equity	<u>\$ 515,520</u>	<u>\$ 218,161</u>

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

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

	Years Ended December 31,	
	2020	2019
Revenues	\$ 29,782	\$ 11,246
Portfolio operations:		
Inventor royalties	7,349	4,944
Contingent legal fees	7,419	591
Litigation and licensing expenses - patents	5,683	7,803
Amortization of patents	4,681	3,194
Other portfolio expenses (income)	(308)	1,756
Total portfolio operations	<u>24,824</u>	<u>18,288</u>
Net portfolio income (loss)	4,958	(7,042)
General and administrative expenses ⁽¹⁾	24,476	16,376
Operating loss	<u>(19,518)</u>	<u>(23,418)</u>
Other income (expense):		
Change in fair value of investment, net (Note 6)	5,474	9,899
Gain (loss) on sale of investment (Note 6)	8,187	(9,230)
Impairment of other investment	-	(8,195)
Gain on disposal of other investment	-	2,000
Change in fair value of the Series A and B warrants and embedded derivatives	(58,238)	4,518
Gain on sale of prepaid investment and derivative	2,845	-
Change in fair value of trading securities and equity securities	176,173	(145)
Gain on sale of trading securities	7,352	2,188
Loss on foreign currency exchange	(4,905)	(2)
Interest expense on Senior Secured Notes	(5,923)	-
Interest income and other	838	3,432
Total other income	<u>131,803</u>	<u>4,465</u>
Income (loss) before income taxes	112,285	(18,953)
Income tax benefit	1,159	1,824
Net income (loss) including noncontrolling interests in subsidiaries	113,444	(17,129)
Net loss attributable to noncontrolling interests in subsidiaries	-	14
Net income (loss) attributable to Acacia Research Corporation	<u>\$ 113,444</u>	<u>\$ (17,115)</u>
Net income (loss) attributable to common stockholders - basic	<u>\$ 90,330</u>	<u>\$ (17,422)</u>
Basic net income (loss) per common share	<u>\$ 1.85</u>	<u>\$ (0.35)</u>
Weighted average number of shares outstanding - basic	<u>48,840,829</u>	<u>49,764,002</u>
Net income (loss) attributable to common stockholders - diluted	<u>\$ 88,471</u>	<u>\$ (20,373)</u>
Diluted net income (loss) per common share	<u>\$ 1.54</u>	<u>\$ (0.40)</u>
Weighted average number of shares outstanding - diluted	<u>57,435,128</u>	<u>50,896,773</u>

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

	Years Ended December 31,	
	2020	2019
General and administrative expenses	\$ 22,814	\$ 15,301
Non-cash stock compensation expense - G&A	1,662	1,075
Total general and administrative expenses	<u>\$ 24,476</u>	<u>\$ 16,376</u>

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

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

	Series A Redeemable Convertible Preferred Stock		For the Year Ended December 31, 2020						
	Shares	Amount	Common Stock		Treasury Stock	Additional Paid-in Capital	Accumulated Deficit	Noncontrolling Interests in Operating Subsidiaries	Total Stockholders' Equity
			Shares	Amount					
Balance at December 31, 2019	350,000	\$ 8,089	50,370,987	\$ 50	\$ (39,272)	\$ 652,003	\$ (439,656)	\$ 1,833	\$ 174,958
Net income attributable to Acacia Research Corporation	-	-	-	-	-	-	113,444	-	113,444
Accretion of Series A Redeemable Convertible Preferred Stock to redemption value	-	2,835	-	-	-	(2,835)	-	-	(2,835)
Dividend on Series A Redeemable Convertible Preferred Stock	-	-	-	-	-	(1,382)	-	-	(1,382)
Stock options exercised	-	-	-	-	-	48	-	-	48
Compensation expense for share-based awards, net of forfeitures	-	-	593,003	-	-	1662	-	-	1662
Repurchase of common stock	-	-	(1,684,537)	(1)	(3,998)	-	-	-	(3,999)
Dissolution of Acacia Intellectual Property Fund, L.P.	-	-	-	-	-	1,920	(496)	(1,424)	-
Distributions to noncontrolling interests in subsidiaries	-	-	-	-	-	-	-	(409)	(409)
Acquisition of MalinJ1	-	-	-	-	-	-	-	11,042	11,042
Balance at December 31, 2020	350,000	\$ 10,924	49,279,453	\$ 49	\$ (43,270)	\$ 651,416	\$ (326,708)	\$ 11,042	\$ 292,529

For the Year Ended December 31, 2019

	Series A Redeemable Convertible Preferred Stock		Common Stock				Treasury Stock	Additional Paid-in Capital	Accumulated Deficit	Noncontrolling Interests in Operating Subsidiaries	Total Stockholders' Equity
	Shares	Amount	Shares	Amount							
Balance at December 31, 2018	-	\$ -	49,639,319	\$ 50	\$ (39,272)	\$ 651,156	\$ (422,541)	\$ (17,115)	\$ 1,847	\$ 191,240	
Net loss attributable to Acacia Research Corporation	-	-	-	-	-	-	-	-	-	(17,115)	
Issuance of Series A Redeemable Convertible Preferred Shares, net of embedded derivative, Series A Warrant, and issuance costs	350,000	7,782	-	-	-	-	-	-	-	-	
Accretion of Series A redeemable convertible preferred stock to redemption value	-	307	-	-	-	(307)	-	-	-	(307)	
Stock options exercised	-	-	25,136	-	-	79	-	-	-	79	
Compensation expense for share-based awards, net of forfeitures	-	-	706,532	-	-	1,075	-	-	-	1,075	
Net loss attributable to noncontrolling interests in subsidiaries	-	-	-	-	-	-	-	-	(14)	(14)	
Balance at December 31, 2019	350,000	\$ 8,089	50,370,987	\$ 50	\$ (39,272)	\$ 652,003	\$ (439,656)	\$ (17,115)	\$ 1,833	\$ 174,958	

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

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

	<u>2020</u>	<u>2019</u>
Cash flows from operating activities:		
Net income (loss) including noncontrolling interests in subsidiaries	\$ 113,444	\$ (17,129)
Adjustments to reconcile net income (loss) including noncontrolling interests in subsidiaries to net cash provided by (used in) operating activities:		
Change in fair value of investment, net (Note 6)	(5,474)	(9,899)
Loss (gain) on sale of investment (Note 6)	(8,187)	9,230
Impairment of other investment	–	8,195
Gain on disposal of other investment (Note 6)	–	(2,000)
Depreciation and amortization	4,800	3,227
Amortization of debt discount and issuance costs	2,838	
Change in fair value of Series A redeemable convertible preferred stock embedded derivative	8,754	(3,258)
Change in fair value of Series A warrants	3,072	(1,260)
Change in fair value of Series B warrants	46,412	–
Non-cash stock compensation	1,662	1,075
Loss on foreign currency exchange	4,905	–
Change in fair value of trading securities and equity securities - private	(176,173)	(2,241)
Gain on sale of trading securities	(7,352)	–
Gain on sale of prepaid investment and derivative	(2,845)	–
Changes in assets and liabilities:		
Accounts receivable	5	32,373
Prepaid expenses and other assets	(2,919)	(220)
Accounts payable and accrued expenses	(2,546)	109
Royalties and contingent legal fees payable	(16)	(20,510)
Net cash used in operating activities	<u>(19,620)</u>	<u>(2,308)</u>
Cash flows from investing activities:		
Patent acquisition	(13,780)	(4,420)
Sale of investment at fair value (Note 6)	12,409	6,628
Sale of other investments (Note 6)	–	2,000
Purchases of trading securities	(46,492)	(147,178)
Maturities and sales of trading securities	347,332	75,090
Acquisition of LF Equity Income Fund equity securities	(280,263)	–
Distributions to noncontrolling interests in operating subsidiary	(409)	–
Purchases of property and equipment	(199)	(183)
Net cash provided by (used in) investing activities	<u>18,598</u>	<u>(68,063)</u>
Cash flows from financing activities:		
Repurchase of common stock	(3,998)	–
Issuance of Senior Secured Notes, net of lender fee	110,437	–
Senior Secured Notes issuance costs paid to other parties	(496)	–
Dividend on Series A Redeemable Convertible Preferred Stock	(1,382)	–
Issuance of Series A redeemable convertible preferred stock and Series A warrants, net of issuance costs	–	33,842
Issuance of Series B warrants	4,600	–
Proceeds from exercise of stock options	48	79
Net cash provided by financing activities	<u>109,209</u>	<u>33,921</u>
Increase (decrease) in cash and cash equivalents and restricted cash	108,187	(36,450)
Cash and cash equivalents and restricted cash, beginning	<u>92,359</u>	<u>128,809</u>
Cash and cash equivalents and restricted cash, ending	<u>\$ 200,546</u>	<u>\$ 92,359</u>

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

ACACIA RESEARCH CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. DESCRIPTION OF BUSINESS

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

Acacia acquires businesses and operating assets that the Company believes to be undervalued and where the Company believes it can leverage its resources and skill sets to realize and unlock value. The Company intends to leverage its (i) access to flexible capital that can be deployed unconditionally, (ii) expertise in corporate governance and operational restructuring, (iii) willingness to invest in out of favor industries and businesses that suffer from a complexity discount and untangle complex, multi-factor situations, and (iv) expertise and relationships in certain sectors, to complete strategic acquisitions of businesses, divisions, and/or assets with a focus on mature technology, healthcare, industrial and certain financial segments. Acacia seeks to identify opportunities where the Company believes it is an advantaged buyer, where the Company can avoid structured sale processes and create the opportunity to purchase businesses, divisions and/or assets of companies at an attractive price due to the Company’s unique capabilities, relationships, or expertise, or where Acacia believes the target would be worth more to the Company than to other buyers.

Acacia operates its business based on three key principles of People, Process and Performance and have built a management team with identified expertise in Research, Execution and Operation of the Company’s targeted acquisitions.

Acacia, through its operating subsidiaries, also currently engages in its legacy business of investing in, licensing and enforcing patented technologies. Acacia’s operating subsidiaries partner with inventors and patent owners, applying their legal and technology expertise to patent assets to unlock the financial value in their patented inventions. In recent years, Acacia has also invested in technology companies. Acacia leverages its experience, expertise, data and relationships developed as a leader in the IP industry to pursue these opportunities. In some cases, these opportunities will complement and/or supplement Acacia’s primary licensing and enforcement business.

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

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

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

During fiscal year 2020, Acacia obtained control of five new patent portfolios. During fiscal year 2019, Acacia obtained control of four new patent portfolios.

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

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Accounting Principles. The consolidated financial statements and accompanying notes are prepared on the accrual basis of accounting in accordance with generally accepted accounting principles in the United States of America ("U.S. GAAP").

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

Noncontrolling interests in Acacia's majority-owned and controlled operating subsidiaries ("noncontrolling interests") are separately presented as a component of stockholders' equity. Consolidated net income or (loss) is adjusted to include the net (income) or loss attributed to noncontrolling interests in the consolidated statements of operations. Refer to the accompanying consolidated statements of Series A redeemable convertible preferred stock and stockholders' equity for total noncontrolling interests.

In 2020, in connection with the transaction with Link Fund Solutions Limited, which is more fully described in Note 17, the Company acquired equity securities of Malin J1 Limited ("MalinJ1"). MalinJ1 is included in the Company's consolidated financial statements because the Company, through its interest in the equity securities of MalinJ1, has the ability to control the operations and activities of MalinJ1. Viamet HoldCo LLC, a Delaware limited liability company and wholly-owned subsidiary of Acacia (see Note 17), is the majority shareholder of MalinJ1.

A wholly owned subsidiary of Acacia is the general partner of the Acacia Intellectual Property Fund, L.P. (the "Acacia IP Fund"), which was formed in August 2010. The Acacia IP Fund is included in the Company's consolidated financial statements since 2010, as Acacia's wholly owned subsidiary, as the general partner, has the ability to control the operations and activities of the Acacia IP Fund. The Acacia IP Fund was terminated as of December 31, 2017 and dissolved in 2020.

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

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

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

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

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

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

Revenues were comprised of the following for the periods presented:

	2020	2019
	(In thousands)	
Paid-up Revenue Agreements	\$ 28,389	\$ 6,343
Recurring Revenue Agreements	1,393	4,903
Total Revenue	<u>\$ 29,782</u>	<u>\$ 11,246</u>

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

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

Inventor Royalties and Contingent Legal Expenses. Inventor royalties are expensed in the consolidated statements of operations in the period that the related revenues are recognized. In certain instances, pursuant to the terms of the underlying inventor agreements, upfront advances paid to patent owners by Acacia’s operating subsidiaries are recoverable from future net revenues. Patent costs that are recoverable from future net revenues are amortized over the estimated economic useful life of the related patents, or as the prepaid royalties are earned by the inventor, as appropriate, and the related expense is included in amortization expense in the consolidated statements of operations. Any unamortized upfront advances recovered from net revenues are expensed in the period recovered and included in amortization expense in the consolidated statements of operations. There were no patent acquisition expenses for the years ended December 31, 2020 and 2019.

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

Fair Value Measurements. U.S. GAAP defines fair value as the price that would be received for an asset or the exit price that would be paid to transfer a liability in the principal or most advantageous market in an orderly transaction between market participants on the measurement date, and also establishes a fair value hierarchy which requires an entity to maximize the use of observable inputs, where available. Refer to Note 14 to our notes to consolidated financial statements for more information related to our fair value measurement.

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

Long Term Restricted Cash. Long-term restricted cash relates to the proceeds received from the issuance of Series A redeemable convertible preferred stock (the "Series A Redeemable Convertible Preferred Stock") which are held in an escrow account. The amounts are to be released to the Company upon, among other things, (i) the consummation of a suitable investment or acquisition by the Company or (ii) the conversion of Series A Redeemable Convertible Preferred Stock into common stock (see Note 16).

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

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

Investment Securities – Private Equity. As the private company equity securities do not have readily determinable fair value, we have elected to report them under the measurement alternative. They are reported at cost minus impairment, if any, plus or minus changes resulting from observable price changes in orderly transactions for an identical or similar investment of the same issuer. The fair values of the private company securities were estimated based on recent financing transactions and secondary market transactions and factoring in any adjustments for illiquidity or preference of these securities. Changes in fair value are reported in the consolidated statements of operations in other income (expense).

Impairment of Investments. Acacia evaluates its investments in marketable and private equity securities for potential impairment, employing a methodology on a quarterly basis that considers available quantitative and qualitative evidence. If the cost or carrying value of an investment exceeds its estimated fair value, the Company evaluates, among other factors, general market conditions, credit quality of instrument issuers, the duration and extent to which the fair value is less than cost, and the Company's intent and ability to hold, or plans or ability to sell. Fair value is estimated based on publicly available market information or other estimates determined by management. Investments are considered to be impaired when a decline in fair value is estimated to be other-than-temporary. Acacia reviews impairments associated with its investments in these securities and determines the classification of any impairment as temporary or other-than-temporary. An impairment is deemed other-than-temporary unless (a) Acacia has the ability and intent to hold an investment for a period of time sufficient for recovery of its carrying amount and (b) positive evidence indicating that the investment's carrying amount is recoverable within a reasonable period of time outweighs any evidence to the contrary. All available evidence, both positive and negative, is considered to determine whether, based on the weight of such evidence, the carrying amount of the investment is recoverable within a reasonable period of time. For investments classified as available-for-sale, unrealized losses that are other-than-temporary are recognized in the consolidated statements of operations.

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

Three licensees individually accounted for 64%, 10% and 7%, respectively, of revenues recognized during the year ended December 31, 2020. Three licensees individually accounted for 43%, 22% and 15%, respectively, of revenues recognized during the year ended December 31, 2019. Two licensees individually represented approximately 62% and 21%, respectively, of accounts receivable at December 31, 2020. Two licensees individually represented approximately 70% and 17%, respectively, of accounts receivable at December 31, 2019.

For 2020 and 2019, 8% and 39%, respectively, of revenues were attributable to licensees domiciled in foreign jurisdictions, based on the jurisdiction of the entity obligated to satisfy payment obligations pursuant to the applicable revenue arrangement. The Company does not have any material foreign operations.

Acacia performs credit evaluations of its licensees with significant receivable balances, if any, and has not experienced any significant credit losses. Accounts receivable are recorded at the executed contract amount and generally do not bear interest. Collateral is not required. An allowance for doubtful accounts may be established to reflect the Company's best estimate of probable losses inherent in the accounts receivable balance, and is reflected as a contra-asset account on the balance sheet and a charge to operating expenses in the consolidated statements of operations for the applicable period. The allowance is determined based on known troubled accounts, historical experience, and other currently available evidence. There was no allowance for doubtful accounts established for the periods presented.

Fair Value of Financial Instruments. The carrying value of cash and cash equivalents, restricted cash, accounts receivables, and current liabilities approximates their fair values due to their short-term maturities.

Property and Equipment. Property and equipment are recorded at cost. Major additions and improvements that materially extend useful lives of property and equipment are capitalized. Maintenance and repairs are charged against the results of operations as incurred. When these assets are sold or otherwise disposed of, the asset and related depreciation are relieved, and any gain or loss is included in the consolidated statements of operations for the period of sale or disposal. Depreciation and amortization is computed on a straight-line basis over the following estimated useful lives of the assets:

Furniture and fixtures	3 to 5 years
Computer hardware and software	3 to 5 years
Leasehold improvements	2 to 5 years (Lesser of lease term or useful life of improvement)

Rental payments on operating leases are charged to expense in the consolidated statements of operations on a straight-line basis over the lease term.

Patents. Patents include the cost of patents or patent rights (hereinafter, collectively "patents") acquired from third-parties or obtained in connection with business combinations. Patent costs are amortized utilizing the straight-line method over their remaining economic useful lives, ranging from one to five years.

Leases. The Company adopted ASC 842 as of January 1, 2019, electing the practical expedient approaches. The primary impact of adopting ASC 842 for the Company was the recognition in the consolidated balance sheet of certain lease-related assets and liabilities for operating leases with terms longer than 12 months. Such amounts were not previously accounted for in the Company's consolidated balance sheets. The Company's leases primarily consist of facility leases which are classified as operating leases. The Company assesses whether an arrangement contains a lease at inception. The Company recognizes a lease liability to make contractual payments under all leases with terms greater than twelve months and a corresponding right-of-use asset, representing its right to use the underlying asset for the lease term. Upon adoption of ASC 842 on January 1, 2019, the carrying value of certain lease related liabilities for its excess of lease payments over anticipated sublease income existing at that date, was offset against the related right-of-use assets. Lease expense is recognized on a straight-line basis over the lease term.

Investments at Fair Value. On an individual investment basis, Acacia may elect to account for investments in companies where the Company has the ability to exercise significant influence over operating and financial policies of the investee, at fair value. If the fair value option is applied to an investment that would otherwise be accounted for under the equity method of accounting, it is applied to all of the financial interests in the same entity that are eligible items (i.e., common stock and warrants).

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

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

The initial determination of whether an investment is substantially similar to common stock is made on the initial date of investment if the Company has the ability to exercise significant influence over the operating and financial policies of the investee. That determination is reconsidered if (i) contractual terms of the investment are changed, (ii) there is a significant change in the capital structure of the investee, including the investee's receipt of additional subordinated financing, or (iii) the Company obtains an additional interest in an investment, resulting in the method of accounting for the cumulative interest being based on the characteristics of the investment at the date at which the Company obtains the additional interest. Refer to Notes 6 and 17 for additional information.

Impairment of Long-lived Assets. Acacia reviews long-lived assets and intangible assets for potential impairment annually (quarterly for patents) and when events or changes in circumstances indicate the carrying amount of an asset may not be recoverable. In the event the expected undiscounted future cash flows resulting from the use of the asset is less than the carrying amount of the asset, an impairment loss is recorded equal to the excess of the asset's carrying value over its fair value. If an asset is determined to be impaired, the loss is measured based on quoted market prices in active markets, if available. If quoted market prices are not available, the estimate of fair value is based on various valuation techniques, including a discounted value of estimated future cash flows. In the event that management decides to no longer allocate resources to a patent portfolio, an impairment loss equal to the remaining carrying value of the asset is recorded. Refer to Note 5 for additional information.

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

Contingent Liabilities. The Company, from time to time, is involved in certain legal proceedings. Based upon consultation with outside counsel handling its defense in these matters and the Company's analysis of potential outcomes, if the Company determines that a loss arising from such matters is probable and can be reasonably estimated, an estimate of the contingent liability is recorded in its consolidated financial statements. If only a range of estimated loss can be determined, an amount within the range that, based on estimates, assumptions and judgments, reflects the most likely outcome, is recorded as a contingent liability in the consolidated financial statements. In situations where none of the estimates within the estimated range is a better estimate of probable loss than any other amount, the Company records the low end of the range. Any such accrual would be charged to expense in the appropriate period. Litigation expenses for these types of contingencies are recognized in the period in which the litigation services were provided.

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

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

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

Profits Interest Units (“Units”) are accounted for in accordance with Accounting Standards Codification (“ASC”) 718-10, “Compensation - Stock Compensation.” The Units vest as described at Note 9, and therefore, the vesting conditions do not meet the definition of service, market or performance conditions, as defined in ASC 718. As such, the Units are classified as liability awards. Liability classified awards are measured at fair value on the grant date and re-measured each reporting period at fair value until the award is settled. Compensation expense is adjusted each reporting period for changes in fair value prorated for the portion of the requisite service period rendered. Initially, compensation expense was recognized on a straight-line basis over the employee’s requisite service period (generally the vesting period of the equity award) which was five years. Upon full vesting of the award, which occurred during the three months ended September 30, 2017, previously unrecognized compensation expense was immediately recognized in the period, and will continue to be fully recognized for any changes in fair value, until the Units are settled. The Company has a purchase option to purchase the vested Units that are not otherwise forfeited after termination of continuous service. The exercise price of the purchase option is the fair market value of the Units on the date of termination of continuous service. At each reporting date, the value of the Units that are subject to the purchase option will be the measured at the fair value on the termination date. Non-cash stock compensation expense related to the Units is reflected in general and administrative expense in the accompanying consolidated statements of operations.

Series A Warrants. The fair value of the Series A warrants (the “Series A Warrants”) is estimated using a Black-Scholes option-pricing model. The fair value of the Series A Warrants as of December 31, 2020 was estimated based on the following assumptions: volatility of 29 percent, risk-free rate of 0.62 percent, term of 6.79 years and a dividend yield of 0 percent. The fair value of the Series A Warrants as of December 31, 2019 was estimated based on the following assumptions: volatility of 30 percent, risk-free rate of 1.85 percent, term of 7.79 years and a dividend yield of 0 percent. Refer to Notes 16 for additional information.

Series B Warrants. The fair value of the Series B Warrants is estimated using Monte Carlo valuation technique. The fair value of the Series B Warrants as of December 31, 2020 was estimated based on event probabilities of future exercise scenarios and the following weighted-average assumptions: (1) volatility of 29 percent, risk-free rate of 0.63 percent, term of 6.87 years, a dividend yield of 0 percent, and a discount for lack of marketability of 10 percent, and (2) volatility of 50 percent, risk-free rate of 0.12 percent, term of 1.65 years and a dividend yield of 0 percent, and a discount for lack of marketability of 10 percent. Refer to Notes 16 for additional information.

Embedded derivatives. Embedded derivatives that are required to be bifurcated from their host contract are valued separately from host instrument. A binomial lattice framework is used to estimate the fair value of the embedded derivative in the Series A Redeemable Convertible Preferred Stock. Refer to Notes 16 for additional information.

The binomial model utilizes the Tsiveriotis and Fernandes (“TF”) implementation in which a convertible instrument is split into two separate components: a cash-only component which is subject to the selected risk-adjusted discount rate and an equity component which is subject only to the risk-free rate. The model considers the (i) implied volatility of the value of our common stock, (ii) appropriate risk-free interest rate, (iii) credit spread, (iv) dividend yield, (v) dividend accrual (and a step-up in rates), and (vi) event probabilities of the various conversion and redemption scenarios.

The implied volatility of the Company’s common stock is estimated based on a haircut applied to the historical volatility. A volatility haircut is a concept used to describe a commonly observed occurrence in which the volatility implied by market prices involving options, warrants, and convertible debt is lower than historical actual realized volatility. The assumed base case term used in the valuation model is the period remaining until November 15, 2027 (the maturity date). The risk-free interest rate is based on the yield on the U.S. Treasury with a remaining term equal to the expected term of the conversion and early redemption options. The significant assumptions utilized in the Company’s valuation of the embedded derivative at December 31, 2020 are as follows: volatility of 29 percent, risk-free rate of 0.62 percent, a credit spread of 19 percent and a dividend yield of 0 percent. The significant assumptions utilized in the Company’s valuation of the embedded derivative at December 31, 2019 are as follows: volatility of 30 percent, risk-free rate of 1.86 percent, a credit spread of 25 percent and a dividend yield of 0 percent. The fair value measurement of the embedded derivative is sensitive to these assumptions and changes in these assumptions could result in a materially different fair value measurement.

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

Under U.S. generally accepted accounting principles, a tax position is a position in a previously filed tax return or a position expected to be taken in a future tax filing that is reflected in measuring current or deferred income tax assets and liabilities. Tax positions are recognized only when it is more likely than not (likelihood of greater than 50%), based on technical merits, that the position will be sustained upon examination. Tax positions that meet the more likely than not threshold are measured using a probability weighted approach as the largest amount of tax benefit that is greater than 50% likely of being realized upon settlement.

Segment Reporting. Acacia uses the management approach, which designates the internal organization that is used by management for making operating decisions and assessing performance as the basis of Acacia's reportable segments. The Company manages its operations as a single segment for the purposes of assessing performance and making operating decisions.

Use of Estimates. The preparation of financial statements in conformity with generally accepted accounting principles in the United States of America requires management to make estimates and assumptions that affect the reported amount of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from these estimates. Acacia believes that, of the significant accounting policies described herein, the accounting policies associated with revenue recognition, the valuation of the equity instruments discussed at Notes 6, 14 and 17, the valuation of Series A redeemable convertible preferred stock, Series A warrants, Series B warrants, and embedded derivatives, stock-based compensation expense, impairment of patent-related intangible assets, the determination of the economic useful life of amortizable intangible assets, income taxes and valuation allowances against net deferred tax assets, require its most difficult, subjective or complex judgments.

Income Per Share. For periods in which the Company generates net income, the Company computes basic net income per share attributable to common stockholders using the two-class method required for capital structures that include participating securities. Under the two-class method, securities that participate in non-forfeitable dividends, such as the Company's outstanding unvested restricted stock and Series A Redeemable Convertible Preferred Stock, are considered participating securities and are allocated a portion of the Company's earnings. For periods in which the Company generates a net loss, net losses are not allocated to holders of the Company's participating securities as the security holders are not contractually obligated to share in the Company's losses.

Basic net income (loss) per share of common stock is computed by dividing net (income) loss attributable to common stockholders by the weighted average number of shares of common stock outstanding for the period. Diluted net income (loss) per share of common stock is computed by dividing net income (loss) attributable to common stockholders by the weighted average number of common and dilutive common equivalent shares outstanding for the period using the treasury stock method or the as-converted method, or the two-class method for participating securities, whichever is more dilutive. Potentially dilutive common stock equivalents consist of stock options, restricted stock units, unvested restricted stock, Series A Redeemable Convertible Preferred Stock, Series A Warrants, and Series B Warrants.

The following table presents the calculation of basic and diluted income per share of common stock:

	Years Ended December 31,	
	2020	2019
	(In thousands, except share and per share information)	
Numerator:		
Net income (loss) attributable to Acacia Research Corporation	\$ 113,444	\$ (17,115)
Dividend on Series A redeemable convertible preferred stock	(1,381)	–
Accretion of Series A redeemable convertible preferred stock	(2,835)	(307)
Undistributed earnings allocated to participating securities	(18,898)	–
Net income (loss) attributable to common stockholders - basic	<u>90,330</u>	<u>(17,422)</u>
Add: Accretion of Series A redeemable convertible preferred stock	–	307
Less: Change in fair value of Series A redeemable convertible preferred stock embedded derivative	–	(3,258)
Less: Change in fair value of Series A warrants	(1,348)	–
Less: Change in fair value of dilutive Series B warrants	(5,557)	–
Add: Interest expense associated with Starboard Notes, net of tax	1,889	–
Add: Undistributed earnings allocated to participating securities	18,898	–
Reallocation of undistributed earnings to participating securities	(15,740)	–
Net income (loss) attributable to common stockholders - diluted	<u>\$ 88,471</u>	<u>\$ (20,373)</u>
Denominator:		
Weighted-average shares used in computing net income (loss) per share attributable to common stockholders - basic	48,840,829	49,764,002
Potentially dilutive common shares:		
Series A Preferred Stock	–	1,132,771
Restricted stock units	637,044	–
Employee stock options	2,952	–
Series A Warrants	77,592	–
Series B Warrants	<u>7,876,712</u>	–
Weighted-average shares used in computing net income (loss) per share attributable to common stockholders - diluted	<u>57,435,128</u>	<u>50,896,773</u>
Basic net income (loss) per common share	<u>\$ 1.85</u>	<u>\$ (0.35)</u>
Diluted net income (loss) per common share	<u>\$ 1.54</u>	<u>\$ (0.40)</u>
Anti-dilutive potential common shares excluded from the computation of diluted net income (loss) per common share:		
Equity-based incentive awards	206,916	1,783,254
Series A warrants	–	5,000,000
Series B warrants	<u>68,493,151</u>	–
Total	<u>68,700,067</u>	<u>6,783,254</u>

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

3. TRADING SECURITIES

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

<u>Security Type</u>	<u>Cost</u>	<u>Gross Unrealized Gain</u>	<u>Gross Unrealized Loss</u>	<u>Fair Value</u>
	(In thousands)			
December 31, 2020:				
Trading securities - equity	\$ 36,851	\$ 74,099	\$ (1,847)	\$ 109,103
December 31, 2019:				
Trading securities - debt	\$ 93,712	\$ 143	\$ (12)	\$ 93,843
Trading securities - equity	17,674	211	(745)	17,140
	<u>\$ 111,386</u>	<u>\$ 354</u>	<u>\$ (757)</u>	<u>\$ 110,983</u>

Trading securities as of December 31, 2020 and 2019, were comprised of investments in equity securities of publicly held companies (equity securities) and investments in corporate bonds (debt securities). For the year ended December 31, 2020, proceeds from the sale and maturity of debt securities and equity securities were \$118,459,000 and \$46,383,000, respectively. For the year ended December 31, 2019, proceeds from the sale and maturity of debt securities and equity securities were \$49,751,000 and \$25,339,000, respectively.

4. ACCRUED EXPENSES

Accrued expenses consist of the following at December 31, 2020 and 2019:

	<u>2020</u>	<u>2019</u>
	(In thousands)	
Accrued legal expenses - patent	\$ 2,284	\$ 6,181
Accrued consulting and other professional fees	-	470
Short-term lease liability	589	435
Other accrued liabilities	834	179
	<u>\$ 3,707</u>	<u>\$ 7,265</u>

5. PATENTS

Acacia's only identifiable intangible assets are patents and patent rights, with estimated remaining economic useful lives ranging from one to five years. For all periods presented, all of Acacia's identifiable intangible assets were subject to amortization. The gross carrying amounts and accumulated amortization related to investments in intangible assets as of December 31, 2020 and 2019 are as follows (in thousands):

	2020	2019
Gross carrying amount - patents	\$ 336,834	\$ 330,588
Accumulated amortization - patents ⁽¹⁾	(319,922)	(322,774)
Patents, net	<u>\$ 16,912</u>	<u>\$ 7,814</u>

⁽¹⁾ Includes patent impairment charges for the applicable periods.

The weighted-average remaining estimated economic useful life of Acacia's patents and patent rights is 4 years. Scheduled annual aggregate amortization expense is estimated to \$4,450,000 in 2021, \$4,451,000 in 2022, \$4,376,000 in 2023, \$3,005,000 in 2024, and \$630,000 thereafter.

Acacia did not record charges related to the impairment of patent-related intangible assets for the years ended December 31, 2020 and December 31, 2019. There is no accelerated amortization or sales for patent-related assets for the years ended December 31, 2020 and December 31, 2019.

6. INVESTMENT AT FAIR VALUE

During 2016 and 2017, Acacia made certain investments in Veritone, Inc. ("Veritone"). As a result of these transactions, Acacia received an aggregate total of 4,119,521 shares of Veritone common stock and warrants to purchase a total of 1,120,432 shares of Veritone common stock at an exercise price of \$13.61 per share expiring between 2020 and 2027. During the year ended December 31, 2020, Acacia exercised 963,712 warrants, and recorded a realized gain of \$11.5 million. At December 31, 2020, the fair value of the 156,720 remaining warrants held by Acacia totaled \$2,752,000.

During the year ended December 31, 2019, Acacia sold 1,121,071 shares Veritone common stock and recorded a realized loss of \$9.2 million. During the three months ended March 31, 2020, Acacia sold all remaining 298,450 shares Veritone common stock and recorded a realized loss of \$3.3 million.

Changes in the fair value of Acacia’s investment in Veritone are recorded as unrealized gains or losses in the consolidated statements of operations. For the year ended December 31, 2020, and 2019, the accompanying consolidated statements of operations reflected the following:

	2020	2019
	(In thousands)	
Change in fair value of investment, warrants	\$ 1,996	\$ (1,308)
Change in fair value of investment, common stock	3,478	11,207
Gain on sale of investment, warrants	11,503	–
Loss on sale of investment, common stock	(3,316)	(9,230)
Net realized and unrealized gain on investment at fair value	<u>\$ 13,661</u>	<u>\$ 669</u>

7. STOCKHOLDERS’ EQUITY

Repurchases of Common Stock. In February 2018, Acacia’s Board of Directors authorized the repurchase of up to \$20,000,000 of the Company’s outstanding common stock in open market purchases or private purchases, from time to time, in amounts and at prices to be determined by the Board of Directors at its discretion (the “Stock Repurchase Program”). On August 5, 2019, Acacia’s Board of Directors approved a new stock repurchase program, which authorized the purchase of up to \$10.0 million of the Company’s common stock through open market purchases, through block trades, through 10b5-1 plans, or by means of private purchases, from time to time, through July 31, 2020.

In determining whether or not to repurchase any shares of Acacia’s common stock, Acacia’s Board of Directors consider such factors as the impact of the repurchase on Acacia’s cash position, as well as Acacia’s capital needs and whether there is a better alternative use of Acacia’s capital. Acacia has no obligation to repurchase any amount of its common stock under the Stock Repurchase Program. Repurchases to date were made in the open market in compliance with applicable SEC rules. The authorization to repurchase shares presented an opportunity to reduce the outstanding share count and enhance stockholder value. The repurchased shares are expected to be retired. Monthly stock repurchases for the periods presented, all of which were purchased as part of a publicly announced plan or program, were as follows:

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

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

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

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

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

8. INCOME TAXES

Acacia’s income tax benefit (expense) for the fiscal periods presented consisted of the following:

	2020	2019
	(in thousands)	
Current:		
Federal	\$ —	\$ —
State	(66)	(34)
Foreign	1,225	1,858
Total current	<u>1,159</u>	<u>1,824</u>
Deferred:		
Federal	—	—
State	—	—
Total deferred	<u>—</u>	<u>—</u>
Income tax benefit	<u>\$ 1,159</u>	<u>\$ 1,824</u>

The tax effects of temporary differences and carryforwards that give rise to significant portions of deferred tax assets and liabilities consist of the following at December 31, 2020 and 2019:

	2020	2019
	(in thousands)	
Deferred tax assets:		
Net operating loss and capital loss carryforwards and credits	\$ 113,561	\$ 112,280
Unrealized loss on investments held at fair value	0	538
Stock compensation	497	358
Fixed assets and intangibles	677	1,316
Basis of investments in affiliates	254	300
Accrued liabilities and other	762	631
State taxes	15	25
Total deferred tax assets	115,766	115,448
Valuation allowance	(76,969)	(115,077)
Total deferred tax assets, net of valuation allowance	38,797	371
Deferred tax liabilities:		
ROU Asset	(330)	(347)
Unrealized loss on investments held at fair value	(38,374)	-
Other	(93)	(24)
Total deferred tax liabilities	(38,797)	(371)
Net deferred tax assets (liabilities)	\$ -	\$ -

A reconciliation of the federal statutory income tax rate and the effective income tax rate is as follows:

	2020	2019
Statutory federal tax rate - (benefit) expense	21%	21%
State income and foreign taxes, net of federal tax effect	(1)%	7%
Foreign tax credit	-%	-%
Noncontrolling interests in operating subsidiaries	-%	-%
Nondeductible permanent items	11%	1%
Change in tax rate	-%	-%
Expired capitalized loss	-%	(2)%
Valuation allowance	(33)%	(13)%
Other	1%	(4)%
	(1)%	10%

For the periods presented, the Company recorded full valuation allowances against its net deferred tax assets due to uncertainty regarding future realization pursuant to guidance set forth in ASC 740, "Income Taxes." In future periods, if the Company determines it will more likely than not be able to realize certain of these amounts, the applicable portion of the benefit from the release of the valuation allowance will generally be recognized in the consolidated statements of operations in the period the determination is made.

At December 31, 2020, Acacia had U.S. federal and state income tax net operating loss carryforwards ("NOLs") totaling approximately \$274,283,000 and \$13,809,000, respectively. For federal income tax purposes, our NOL carryovers generated for tax years beginning before January 1, 2018 will begin to expire in 2026. Pursuant to the Tax Cuts and Jobs Act enacted by the U.S. federal government in December 2017, for federal income tax purposes, NOL carryovers generated for our tax years beginning January 1, 2018 can be carried forward indefinitely but will be subject to a taxable income limitation. Our capital loss carryovers totaled \$11,155,000 at December 31, 2020, expiring in 2029. For state income tax purposes, our NOLs will expire between 2028 and 2040.

As of December 31, 2020, Acacia had approximately \$50,973,000 of foreign tax credits, expiring between 2021 and 2026. In general, foreign taxes withheld may be claimed as a deduction on future U.S. corporate income tax returns, or as a credit against future U.S. income tax liabilities, subject to certain limitations.

Tax expense (benefit) for the periods presented primarily reflects foreign taxes withheld and refunded on revenue agreements executed with licensees in foreign jurisdictions and other state taxes. Excluding the impact of the change in valuation allowance, annual effective tax rates were 32% for fiscal year 2020 and 23% for fiscal year 2019. Results for fiscal year 2020 included an unrealized gain on our investment in Veritone which created a deferred tax liability totaling approximately \$590,000, and an unrealized gain on our investment in the LF equity income fund portfolio which created a deferred tax liability totaling approximately \$37,706,000. Results for fiscal year 2019 included an unrealized loss on Acacia's investment in Veritone which created a deferred tax asset totaling approximately \$538,000.

Acacia is subject to taxation in the U.S. and in various state jurisdictions and incurs foreign tax withholdings on revenue agreements with licensees in certain foreign jurisdictions. With no material exceptions, Acacia is no longer subject to U.S. federal or state examinations by tax authorities for years before 2016. The California Franchise Tax Board audited the 2011 through 2016 California combined income tax returns. The California Franchise Tax Board has proposed adjustments for 2011 through 2016 that will result in a reduction in our net operating loss carryforward deferred tax asset of \$571,000. As those NOL's have been subject to a full valuation allowance, the impact of these adjustments has no impact to the consolidated statements of operations for the periods presented.

At both December 31, 2020 and 2019, the Company had total unrecognized tax benefits of approximately \$731,000. No interest and penalties have been recorded for the unrecognized tax benefits for the periods presented. At December 31, 2020, if recognized, approximately \$731,000 of tax benefits, net of valuation allowance, would impact the Company's effective tax rate. The Company does not expect that the liability for unrecognized tax benefits will change significantly within the next 12 months.

Acacia recognizes interest and penalties with respect to unrecognized tax benefits in income tax expense (benefit). Acacia has identified no uncertain tax position for which it is reasonably possible that the total amount of unrecognized tax benefits will significantly increase or decrease within 12 months.

9. EQUITY-BASED INCENTIVE PLANS

Stock-Based Incentive Plans

The 2013 Acacia Research Corporation Stock Incentive Plan ("2013 Plan") and the 2016 Acacia Research Corporation Stock Incentive Plan ("2016 Plan") (collectively, the "Plans") were approved by the stockholders of Acacia in May 2013 and June 2016, respectively. All Plans allow grants of stock options, stock awards and performance shares with respect to Acacia common stock to eligible individuals, which generally includes directors, officers, employees and consultants. Except as noted below, the terms and provisions of the Plans are identical in all material respects.

Acacia's compensation committee administers the discretionary option grant and stock issuance programs. The compensation committee determines which eligible individuals are to receive option grants or stock issuances under those programs, the time or times when the grants or issuances are to be made, the number of shares subject to each grant or issuance, the status of any granted option as either an incentive stock option or a non-statutory stock option under the federal tax laws, the vesting schedule to be in effect for the option grant or stock issuance and the maximum term for which any granted option is to remain outstanding. The exercise price of options is generally equal to the fair market value of Acacia's common stock on the date of grant. Options generally begin to be exercisable six months to one year after grant and generally expire seven to ten years after grant. Stock options with time-based vesting generally vest over two to three years and restricted shares with time based vesting generally vest in full after one to three years (generally representing the requisite service period). The Plans terminate no later than the tenth anniversary of the approval of the incentive plans by Acacia's stockholders.

The Plans provide for the following separate programs:

- *Discretionary Option Grant Program.* Under the discretionary option grant program, Acacia's compensation committee may grant (1) non-statutory options to purchase shares of common stock to eligible individuals in the employ or service of Acacia or its subsidiaries (including employees, non-employee board members and consultants) at an exercise price not less than 85% of the fair market value of those shares on the grant date, and (2) incentive stock options to purchase shares of common stock to eligible employees at an exercise price not less than 100% of the fair market value of those shares on the grant date (not less than 110% of fair market value if such employee actually or constructively owns more than 10% of Acacia's voting stock or the voting stock of any of its subsidiaries).
- *Automatic Option Grant Program.* Through fiscal year 2016, each non-employee director received restricted stock units or stock options for the number of shares determined by dividing the annual retainer by the grant date fair value of Acacia's common stock on the grant date. In addition, each new non-employee director received restricted stock units or stock options for the number of shares determined by dividing the annual Board of Directors retainer by the grant date fair value of Acacia's common stock on the commencement date. These restricted stock units and stock options vested in a series of twelve quarterly installments over the three year period following the grant date, subject to immediate acceleration upon a change in control. Acacia will deliver the unrestricted shares corresponding to the vested restricted stock units within thirty (30) days after the first to occur of the following events: (i) the fifth (5th) anniversary of the grant date; or (ii) termination of the non-employee director's service as a member of the Company's Board of Directors. The non-employee directors do not have any rights, benefits or entitlements with respect to any shares unless and until the shares have been delivered.
- *Stock Issuance Program.* Under the stock issuance program, eligible individuals may be issued shares of common stock directly, upon the attainment of performance milestones or the completion of a specified period of service or as a bonus for past services. Under this program, the purchase price for the shares shall not be less than 100% of the fair market value of the shares on the date of issuance, and payment may be in the form of cash or past services rendered. The eligible individuals receiving restricted stock awards ("RSA") shall have full stockholder rights with respect to any shares of Common Stock issued to them under the Stock Issuance Program, whether or not their interest in those shares is vested. Accordingly, the eligible individuals shall have the right to vote such shares and to receive any regular cash dividends paid on such shares. The eligible individuals receiving restricted stock units ("RSU") shall not have full stockholder rights until they vest.

The number of shares of Common Stock initially reserved for issuance under the 2013 Plan was 4,750,000 shares. No new additional shares will be added to the 2013 Plan without security holder approval (except for shares subject to outstanding awards that are forfeited or otherwise returned to the 2013 Plan). The stock issuable under the 2013 Plan shall be shares of authorized but unissued or reacquired Common Stock, including shares repurchased by the Company on the open market. In June 2016, 625,390 shares of common stock available for issuance under the 2013 Plan were transferred into the 2016 Plan. At December 31, 2020, there were 378,270 shares available for grant under the 2013 Plan.

The number of shares of Common Stock initially reserved for issuance under the 2016 Plan was 4,500,000 shares plus 625,390 shares of common stock available for issuance under the 2013 Plan, as of the effective date of the Plan. At December 31, 2020, there were 4,068,308 shares available for grant under the 2016 Plan.

Upon the exercise of stock options, the granting of restricted stock, or the delivery of shares pursuant to vested restricted stock units, it is Acacia's policy to issue new shares of common stock. Acacia's Board of Directors may amend or modify the Plans at any time, subject to any required stockholder approval. As of December 31, 2020, there are 6,509,469 shares of common stock reserved for issuance under the Plans.

Stock-based award grant activity for the periods presented was as follows:

	2020		2019	
	Shares	Aggregate fair value (in thousands)	Shares	Aggregate fair value (in thousands)
Restricted stock awards with time-based service conditions	592,000	\$ 2,087	777,000	\$ 2,332
Restricted stock units with market-based service conditions	—	—	900,000	1,280
Restricted stock units with time-based service conditions	86,500	276	—	—
Total incentive awards granted	678,500	\$ 2,363	1,677,000	\$ 3,612

The following table summarizes stock option activity for the Plans for the year ended December 31, 2020:

	Weighted-Average			
	Options	Exercise Price	Remaining Contractual Term	Aggregate Intrinsic Value
Outstanding at December 31, 2019	326,000	\$ 4.38		
Granted	—	\$ —		
Exercised	(14,000)	\$ 3.60		
Expired/forfeited	(2,000)	\$ 3.99		
Outstanding at December 31, 2020	310,000	\$ 4.41	2.2 years	\$ —
Vested	298,000	\$ 4.44	2.1 years	\$ —
Exercisable at December 31, 2020	298,000	\$ 4.44	2.1 years	\$ —

The aggregate intrinsic value of options exercised during the years ended December 31, 2020 and 2019 was \$7,000 and \$4,000, respectively. The aggregate intrinsic value of options vested during the year ended December 31, 2020 was \$8,000. No options were granted during the year ended December 31, 2020. The aggregate fair value of options vested during the years ended December 31, 2020 and 2019 was \$54,000 and \$294,000, respectively. As of December 31, 2020, the total unrecognized compensation expense related to non-vested stock option awards was \$9,000, which is expected to be recognized over a weighted-average term of approximately 4 months.

The following table summarizes non-vested restricted share activity for the year ended December 31, 2020:

	Nonvested Restricted Shares	Weighted Average Grant Date Fair Value
Nonvested restricted stock at December 31, 2019	476,000	\$ —
Granted	592,000	\$ 3.52
Vested	(353,000)	\$ 3.12
Canceled	(31,000)	\$ 2.85
Nonvested restricted stock at December 31, 2020	684,000	\$ 3.38

The weighted-average grant date fair value of non-vested restricted stock granted during the years ended December 31, 2020 and 2019 was \$3.38 and \$2.98, respectively. The aggregate fair value of restricted stock that vested during the years ended December 31, 2020 and 2019 was \$1,101,000 and \$672,000, respectively. As of December 31, 2020, unrecognized compensation expense related to non-vested restricted stock awards was \$2,023,000, which is expected to be recognized over a weighted-average term of approximately 2 years.

The following table summarizes restricted stock units activity for the year ended December 31, 2020:

	Nonvested Restricted Shares	Weighted Average Grant Date Fair Value
Nonvested restricted stock units at December 31, 2019	900,000	\$ 1.42
Granted	166,500	\$ 3.19
Vested	–	\$ –
Canceled	(80,000)	\$ 3.19
Nonvested restricted stock units at December 31, 2020	<u>986,500</u>	<u>\$ 1.58</u>
Vested restricted stock units at December 31, 2020	<u>14,000</u>	<u>\$ 16.72</u>

The weighted-average grant date fair value of restricted units granted during the years ended December 31, 2020 was \$3.19. The aggregate fair value of restricted stock units granted during the year ended December 31, 2020 was \$276,000. The aggregate fair value of restricted stock units granted during the year ended December 31, 2019 was \$1,280,000. No restricted stock units were vested during the years ended December 31, 2020 and 2019. As of December 31, 2020, unrecognized compensation expense related to non-vested restricted stock units was \$936,000, which is expected to be recognized over a weighted-average term of approximately 2 years.

Profits Interest Plan

On February 16, 2017, AIP Operation LLC, a Delaware limited liability company (“AIP”), and an indirect subsidiary of Acacia, adopted a Profits Interest Plan (the “Plan”) that provides for the grant of membership interests in AIP to certain members of management and the Board of Directors of Acacia as compensation for services rendered for or on behalf of AIP. Each profits interest unit granted pursuant to the Plan is intended to qualify as a “profits interest” for U.S. federal income tax purposes and will only have value to the extent the fair value of AIP increases beyond the fair value at the issuance date of the membership interests. The membership interests are represented by units (the “Units”) reserved for the issuance of awards under the Plan. The Units entitle the holders to share in or be allocated certain AIP profits and losses and to receive or share in AIP distributions pursuant to the AIP Limited Liability Company Operating Agreement entered into as of February 16, 2017 (the “LLC Agreement”). In connection with the adoption of the Plan, a form of Profits Interest Agreement was approved pursuant to which Units may be granted from time to time. Units vest upon AIP’s achievement of certain performance milestones (one-third upon 150% appreciation, and the remaining two-thirds upon 300% appreciation in value of Acacia’s aggregate investment in Veritone), subject to the continued service of the recipient, and are subject to the terms and conditions of the Plan, the Profits Interest Agreement and the LLC Agreement. The Units were fully vested in September 2017.

Acacia owns 60% of the membership interests in AIP and at all times will control AIP. Profits interests totaling 400 Units, or 40% of the membership interests in AIP, were granted in February 2017, with an aggregate grant date fair value of \$722,000. The carrying value of the Units totaled \$591,000 as of December 31, 2020, based on the fair value of the Units at the recipient’s service termination date. Upon full vesting of the units in September 2017, all previously unrecognized compensation expense was immediately recognized. As of December 31, 2020, AIP holds the Veritone warrants described at Note 6.

Stock compensation expense is recognized in general and administrative expenses. Compensation expense for the periods presented was comprised of the following:

	2020	2019
	(in thousands)	
Restricted stock awards with time-based service conditions	\$ 1,155	\$ 907
Restricted stock units awards with time-based service conditions	43	–
Restricted stock units with market-based vesting conditions	427	140
Stock options with time-based service vesting conditions	37	28
Total compensation expense	<u>\$ 1,662</u>	<u>\$ 1,075</u>

10. COMMITMENTS AND CONTINGENCIES

Facility Leases

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

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

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

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

Operating lease costs, net of sublease income, were \$603,000, and \$426,000 for the years ended December 31, 2020 and 2019, respectively.

The table below presents aggregate future minimum payments due under the New Lease and the Old Lease, reconciled to lease liabilities included in the consolidated balance sheet as of December 31, 2020:

	Operating Leases	
	(In thousands)	
2021	\$	588
2022		370
2023		364
2024		218
Thereafter		–
Total minimum payments		1,540
Less: short-term lease liabilities		(589)
Long-term lease liabilities	\$	951

Inventor Royalties and Contingent Legal Expenses

In connection with the investment in certain patents and patent rights, certain of Acacia's operating subsidiaries executed related agreements which grant to the former owners of the respective patents or patent rights, the right to receive inventor royalties based on future net revenues (as defined in the respective agreements) generated as a result of licensing and otherwise enforcing the respective patents or patent portfolios.

Acacia's operating subsidiaries may retain the services of law firms that specialize in patent licensing and enforcement and patent law in connection with their licensing and enforcement activities. These law firms may be retained on a contingent fee basis whereby such law firms are paid on a scaled percentage of any negotiated fees, settlements or judgments awarded based on how and when the fees, settlements or judgments are obtained.

Patent Enforcement

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

Other

Acacia is subject to claims, counterclaims and legal actions that arise in the ordinary course of business.

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

On September 6, 2019, Slingshot Technologies, LLC (“Slingshot”) filed a lawsuit in Delaware Chancery Court against the Company and Acacia Research Group, LLC (collectively, the “Acacia Entities”), Monarch Networking Solutions LLC (“Monarch”), Acacia board member Katharine Wolanyk, and Transpacific IP Group, Ltd. (“Transpacific”). Slingshot alleges that the Acacia Entities and Monarch misappropriated its confidential and proprietary information, purportedly furnished to the Acacia Entities and Monarch by Ms. Wolanyk, in acquiring a patent portfolio from Transpacific after Slingshot’s exclusive option to purchase the same patent portfolio from Transpacific had already expired. Slingshot seeks monetary damages, as well as equitable and injunctive relief related to its alleged right to own the portfolio. On March 15, 2021, the court issued orders granting Monarch’s motion to dismiss for lack of personal jurisdiction and Ms. Wolanyk’s motion to dismiss for lack of subject matter jurisdiction. The Acacia Entities maintain that Slingshot’s allegations are baseless, that the Acacia Entities neither had access to nor used Slingshot’s information in acquiring the portfolio, that the Acacia Entities acquired the portfolio as a result of the independent efforts of its IP licensing group, and that Slingshot suffered no damages given its exclusive option to purchase the portfolio had already ended and it has proven itself incapable of closing on the portfolio purchase.

Management believes that the ultimate liability with respect to these claims and legal actions, if any, will not have a material effect on Acacia’s consolidated financial position, results of operations or cash flows. Fiscal year 2020 operating expenses included a net income for settlement offset by contingency accruals totaling \$308,000, net of prior accruals. Refer to Note 4 for information on accrued expenses.

Guarantees and Indemnifications

Certain of Acacia’s operating subsidiaries have made guarantees and indemnities under which they may be required to make payments to a guaranteed or indemnified party, in relation to certain transactions, including revenue transactions in the ordinary course of business. In connection with certain facility leases, Acacia and certain of its operating subsidiaries have indemnified lessors for certain claims arising from the facilities or the leases. Acacia indemnifies its directors and officers to the maximum extent permitted under the laws of the State of Delaware. However, Acacia has a directors and officers insurance policy that may reduce its exposure in certain circumstances and may enable it to recover a portion of future amounts that may be payable, if any. The duration of the guarantees and indemnities varies and, in many cases is indefinite but subject to statute of limitations. The majority of guarantees and indemnities do not provide any limitations of the maximum potential future payments that Acacia could be obligated to make. To date, Acacia has made no payments related to these guarantees and indemnities. Acacia estimates the fair value of its indemnification obligations to be insignificant based on this history and therefore, have not recorded any liability for these guarantees and indemnities in the accompanying consolidated balance sheets. Additionally, no events or transactions have occurred that would result in a material liability at December 31, 2020.

11. RETIREMENT SAVINGS PLAN AND EXECUTIVE SEVERANCE POLICY

Retirement Savings Plan. Acacia has an employee savings and retirement plan under section 401(k) of the Code (the “Plan”). The Plan is a defined contribution plan in which eligible employees may elect to have a percentage of their compensation contributed to the Plan, subject to certain guidelines issued by the Internal Revenue Service. Acacia may contribute to the Plan at the discretion of the Board of Directors. There were no contributions made by Acacia during the periods presented.

Executive Severance Policy. Under Acacia’s Amended Executive Severance Policy, full-time employees as of July 2017 and prior with the title of Senior Vice President and higher (“SVP and higher”) are entitled to receive certain benefits upon termination of employment. If employment of an SVP and higher employee is terminated for other than cause or other than on account of death or disability, Acacia will (i) promptly pay to the SVP and higher employee a lump sum amount equal to the aggregate of (a) accrued obligations (i.e., annual base salary through the date of termination to the extent not theretofore paid and any compensation previously deferred (together with any accrued interest or earnings thereon) and any accrued vacation pay, and reimbursable expenses, in each case to the extent not theretofore paid) and (b) three (3) months of base salary for each full year that the SVP and higher employee was employed by the Company (the “Severance Period”), up to a maximum of twelve (12) months (eighteen (18) months for executive officers of Acacia Research Corporation) of base salary, and (ii) provide to the SVP and higher employee, Acacia paid COBRA coverage for the medical and dental benefits selected in the year in which the termination occurs, for the duration of the Severance Period. Results for the year ended December 31, 2020 and 2019 include \$304,000 and \$420,000 of expenses incurred under the executive severance policy.

12. SUPPLEMENTAL CASH FLOW INFORMATION

Cash paid for state income taxes totaled \$118,000 and \$85,000 for the years ended December 31, 2020 and 2019, respectively. Foreign taxes refunded totaled \$3,600,000 and foreign taxes withheld totaled \$249,000 for the years ended December 31, 2020 and 2019, respectively.

13. RECENT ACCOUNTING PRONOUNCEMENTS

Recent Accounting Pronouncements - Not Yet Adopted.

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

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

14. FAIR VALUE MEASUREMENTS

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

- (i) Level 1 - *Observable Inputs*: Quoted prices in active markets for identical investments;
- (ii) Level 2 - *Pricing Models with Significant Observable Inputs*: Other significant observable inputs, including quoted prices for similar investments, interest rates, credit risk, etc.; and
- (iii) Level 3 - *Unobservable Inputs*: Significant unobservable inputs, including the entity's own assumptions in determining the fair value of investments.

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

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

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

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

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

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

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

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

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

Financial assets and liabilities measured at fair value on a recurring basis were as follows:

	<u>Level 1</u>	<u>Level 2</u> (In thousands)	<u>Level 3</u>
Assets as of December 31, 2020:			
Trading securities - equity	\$ 109,103	\$ –	\$ –
Investment at fair value - warrants (Note 6)	–	2,752	–
Total recurring fair value measurements as of December 31, 2020	<u>\$ 109,103</u>	<u>\$ 2,752</u>	<u>\$ –</u>
Assets as of December 31, 2019:			
Trading securities - debt	\$ –	\$ 93,843	\$ –
Trading securities - equity	17,140	–	–
Investment at fair value - warrants (Note 6)	–	757	–
Investment at fair value - common stock (Note 6)	743	–	–
Total recurring fair value measurements as of December 31, 2019	<u>\$ 17,883</u>	<u>\$ 94,600</u>	<u>\$ –</u>
Liabilities as of December 31, 2020:			
Series A warrants	\$ –	\$ 6,640	\$ –
Series B warrants	–	–	52,341
Embedded derivative liability	–	–	26,728
Total liabilities as of December 31, 2020	<u>\$ –</u>	<u>\$ 6,640</u>	<u>\$ 79,069</u>
Liabilities as of December 31, 2019:			
Series A warrants	\$ –	\$ 3,568	\$ –
Embedded derivative liability	–	–	17,974
Total liabilities as of December 31, 2019	<u>\$ –</u>	<u>\$ 3,568</u>	<u>\$ 17,974</u>

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

	<u>Series A Preferred Stock Embedded Derivative Liability</u>	<u>Series B Warrants Liability</u>
	(In thousands)	
Opening balance as of January 1, 2019		
Issuance of Series A warrants	\$ 21,232	\$ –
Remeasurement to fair value	(3,258)	–
Balance as of December 31, 2019	<u>\$ 17,974</u>	<u>\$ –</u>
Issuance of Series B warrants	–	4,600
Remeasurement to fair value	8,754	47,741
Balance as of December 31, 2020	<u>\$ 26,728</u>	<u>\$ 52,341</u>

15. RELATED PARTY TRANSACTIONS

During the year ended December 31, 2019, the Company purchased shares of common stock of Drive Shack, Inc. (“Drive Shack”) for an aggregate purchase price of \$2.4 million. Drive Shack and Clifford Press, Chief Executive Officer and director of Acacia, are related parties as Mr. Press is a board member of Drive Shack. The market value of the investment was \$1.4 million and \$2.1 million for the years ended December 31, 2020, and December 31, 2019, respectively. During the years ended December 31, 2020 and 2019, the Company recognized unrealized losses from the investment of \$998,000 and \$263,000, respectively.

16. STARBOARD INVESTMENT

Series A Redeemable Convertible Preferred Stock. On November 18, 2019, the Company entered into a Securities Purchase Agreement with Starboard Value LP (“Starboard”) pursuant to which the Company issued (i) 350,000 shares of Series A Redeemable Convertible Preferred Stock with a par value of \$0.001 per share and a stated value of \$100 per share, and (ii) Series A Warrants to purchase up to 5,000,000 shares of the Company’s common stock to Starboard. The Securities Purchase Agreement also established the terms of certain senior secured notes and additional warrants (the “Series B Warrants”) which may be issued to Starboard in the future. On June 4, 2020, the Company entered into a Supplemental Agreement, as defined below under “Senior Secured Notes”, with certain contractual agreements affecting the Series A Redeemable Convertible Preferred Stock, reflected below.

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

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

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

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

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

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

The Series A Redeemable Convertible Preferred Stock accrues cumulative dividends quarterly at annual rate of 3.0% on the stated value. Upon consummation of the approved investment in June 2020, the dividend rate increased to 8.0% on the stated value. Upon certain triggering events, the dividend rate will increase to 7.0% if the triggering event occurs before an approved investment or 10.0% on the stated value if the triggering event occurs after an approved investment. In connection with the approved investment in June 2020, the Company and Starboard agreed that the dividend rate on the Series A Redeemable Convertible Preferred Stock would accrue at 3.0% so long as no triggering event occurs and the Company maintains \$35 million in escrow. Series A Redeemable Convertible Preferred Stock also participates on an as-converted basis in any regular or special dividends paid to common stockholders. No accrued and unpaid dividends as of December 31, 2020.

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

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

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

Total proceeds received and transaction costs incurred from the issuance of the Series A Redeemable Convertible Preferred Stock amounted to \$35 million and \$1.3 million, respectively. Proceeds received were allocated based on the fair value of the instrument without the Series A Warrants and of the Series A Warrants themselves at the time of issuance. The proceeds allocated to the Series A Redeemable Convertible Preferred Stock were then further allocated between the host preferred stock instrument and the embedded derivative, with the embedded derivative recorded at fair value and the Series A Redeemable Convertible Preferred Stock recorded at the residual amount. The portion of the proceeds allocated to the Series A Warrants, embedded derivative, and Series A Redeemable Convertible Preferred Stock was \$4.8 million, \$21.2 million, and \$8.9 million, respectively. Transaction costs were also allocated between the Series A Redeemable Convertible Preferred Stock and the Series A Warrants on the same basis as the proceeds. The transaction costs allocated to the Series A Redeemable Convertible Preferred Stock were treated as a discount to the Series A Redeemable Convertible Preferred Stock. The transaction costs allocated to the Series A Warrants were expensed as incurred.

The Company classifies the Series A Redeemable Convertible Preferred Stock as mezzanine equity as the instrument will become redeemable at the option of the holder in various scenarios or otherwise on November 15, 2027. As it is probable that the Series A Redeemable Convertible Preferred Stock will become redeemable, the Company accretes the instrument to its redemption value using the effective interest method and recognizes any changes against additional paid in capital in the absence of retained earnings. Accretion for the year ended December 31, 2020 was \$2.8 million.

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

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

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

Accordingly, we have recorded an embedded derivative liability representing the combined fair value of each of these features. The embedded derivative liability is adjusted to reflect fair value at each period end with changes in fair value recorded in the “Change in fair value of redeemable preferred stock embedded derivative” financial statement line item of the accompanying consolidated statements of operations. As of December 31, 2020, the fair value of the Series A embedded derivative was \$26.7 million.

Series A Warrants. On November 18, 2019, in connection with the issuance of the Series A Redeemable Convertible Preferred Stock, the Company issued a detachable Series A Warrants to acquire up to purchase 5,000,000 shares of common stock at a price of \$3.65 per share (subject to certain anti-dilution adjustments) at any time during a period of eight years beginning on the instrument’s issuance date of the Series A Warrants. The fair value of the Series A Warrants was \$4.8 million. The Series A Warrants will be recognized at fair value at each reporting period until exercised, with changes in fair value recognized in other income (expense) in the accompanying consolidated statements of operations. As of December 31, 2020, the fair value of the Series A Warrants was \$6.6 million. As of December 31, 2020, the Series A Warrants have not been exercised.

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

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

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

The Series B Warrants will be recognized at fair value at each reporting period until exercised, with changes in fair value recognized in the consolidated statements of operations in other income (expense). As of December 31, 2020, the fair value of the Series B Warrants was \$52.3 million.

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

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

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

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

Because the New Notes will be settled within twelve months pursuant to their terms, they are classified as current liabilities on the balance sheet. The Company capitalized \$4.6 million in lender fees and \$0.5 million in other issuance costs associated with the issuance of the Notes. The \$4.6 million of lender fees are recognized as long term deferred debt issuance cost and will be amortized to interest expense until November 15, 2027, the maturity date of Series A Redeemable Convertible Preferred Stock. The \$0.5 million issuance costs are recognized as a discount on the Notes and will be amortized to interest expense over the contractual life of the Notes. There is \$0.9 million accrued and unpaid interest on the New Note as of December 31, 2020.

On January 29, 2021, the Company redeemed \$50 million of the New Notes, and the parties agreed that the Company will redeem the remaining \$65 million of the principal amount of the New Notes on or before July 15, 2021.

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

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

The incremental fair value of the Series B Warrants associated with their modification in connection with the issuance of the Notes is \$1.3 million and is recognized as a discount on the Notes and will be amortized to interest expense over the contractual life of the Notes. For the year ended December 31, 2020, \$1,158,000 was amortized to interest expense. As of December 31, 2020, \$171,000 is remaining to be amortized until the Final Redemption Date of July 15, 2021.

17. LF EQUITY INCOME FUND PORTFOLIO INVESTMENT

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

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

In accordance with the Transaction Agreement, the Company transferred the total purchase price of £223.9 million into an escrow account. Upon the transfer of equity securities in the Portfolio Companies to the Company, the associated funds were released from the escrow account to Seller based on the consideration amount assigned to the equity securities for such Portfolio Companies in the Transaction Agreement. As of December 31, 2020, all of the equity securities in the Portfolio Companies were transferred to the Company pursuant to the Transaction Agreement. The Company has sold a portion of the equity securities of such Portfolio Companies while retaining an interest in a number of operating businesses, including a controlling interest in one of the Portfolio Companies.

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

During the year ended December 31, 2020, Seller returned a total of £4.5 million of the Company’s prepaid investment upon the failure to obtain the approval of the existing equity holders, pursuant to their rights of first refusals, of one of the Portfolio Companies in connection with the transfer of its securities. In addition, due to an ownership restriction applicable to one of the Portfolio Companies, the Company sold a small portion of an equity securities derivative for £33,000 before the remaining shares of such Portfolio Company could be transferred to us. The Company recognized a net gain of \$2.8 million related to the returned prepaid investments and sale of the derivative.

Changes in the fair value of Acacia’s investment in the Portfolio Companies are recorded as unrealized gains or losses in the consolidated statements of operations. For the year ended December 31, 2020, the accompanying consolidated statements of operations reflected the following:

	Years Ended December 31,	
	2020	2019
	(In thousands)	
Change in fair value of trading security - LF Fund public securities	\$ 72,104	\$ –
Change in fair value of investment security - LF Fund private securities	103,751	–
Loss on sale of trading security - LF Fund public securities	(3,930)	–
Gain on sale of prepaid investment and derivative	2,845	–
Net realized and unrealized gain on investment in LF Fund securities	<u>\$ 174,770</u>	<u>\$ –</u>

As part of the Company’s acquisition of equity securities in the Portfolio Companies, the Company acquired a majority interest in the equity securities of MalinJ1, which were transferred to the Company on December 3, 2020. The acquisition of the MalinJ1 securities was accounted for as an asset acquisition as there was a change of control of MalinJ1 and substantially all of the fair value of the assets acquired was concentrated in a single identifiable asset, an investment in Viamet Pharmaceuticals Holdings, LLC (“Viamet”). As such the cost basis of the MalinJ1 securities was used to allocate to the Viamet investment, the single identifiable asset, and no goodwill was recognized. The Company through its consolidation of MalinJ1 accounts for the Viamet investment under the equity method as it owns 37.9% of outstanding shares of Viamet.

18. QUARTERLY FINANCIAL DATA (unaudited)

The following table sets forth unaudited consolidated statements of operations data for the eight quarters in the period ended December 31, 2020. This information has been derived from Acacia’s unaudited condensed consolidated financial statements that have been prepared on the same basis as the audited consolidated financial statements and, in the opinion of management, include all adjustments, consisting of normal recurring adjustments, necessary for a fair statement of the information when read in conjunction with the audited consolidated financial statements and related notes thereto. Acacia’s quarterly results have been, and may in the future be, subject to significant fluctuations. As a result, Acacia believes that results of operations for interim periods should not be relied upon as any indication of the results to be expected in any future periods.

	Quarter Ended							
	Dec. 31, 2020	Sept. 30, 2020	Jun. 30, 2020	Mar. 31, 2020	Dec. 31, 2019	Sept. 30, 2019	Jun. 30, 2019	Mar. 31, 2019
	(Unaudited, in thousands, except share and per share information)							
Revenues	\$ 4,383	\$ 19,466	\$ 2,118	\$ 3,815	\$ 688	\$ 1,711	\$ 5,460	\$ 3,387
Portfolio operations:								
Inventor royalties	506	5,772	645	426	192	776	2,623	1,353
Contingent legal fees	564	6,609	12	234	4	35	375	177
Patent acquisition expenses	—	—	—	—	—	—	—	—
Litigation and licensing expenses - patents	2,186	1,001	1,459	1,037	1,160	987	1,855	3,801
Amortization of patents	1,159	1,174	1,305	1,043	857	863	818	656
Other portfolio expenses	—	—	(74)	(234)	1,581	(475)	—	650
Total portfolio operations	4,415	14,556	3,347	2,506	3,794	2,186	5,671	6,637
Net portfolio income (loss)	(32)	4,910	(1,229)	1,309	(3,106)	(475)	(211)	(3,250)
General and administrative expenses (including non-cash stock compensation expense)	6,387	7,692	5,519	4,878	4,328	4,630	3,763	3,655
Impairment of patent-related intangible assets	—	—	—	—	—	—	—	—
Operating income (loss)	(6,419)	(2,782)	(6,748)	(3,569)	(7,434)	(5,105)	(3,974)	(6,905)
Total other income (expense)	86,756	41,213	12,894	(9,060)	5,921	(2,503)	(1,774)	2,821
Income (loss) before provision for income taxes	80,337	38,431	6,146	(12,629)	(1,513)	(7,608)	(5,748)	(4,084)
Provision for income taxes	(98)	(83)	2	1,338	2,147	—	(9)	(314)
Net income (loss) including noncontrolling interests	80,239	38,348	6,148	(11,291)	634	(7,608)	(5,757)	(4,398)
Net (income) loss attributable to noncontrolling interests in subsidiaries	—	—	—	—	—	—	—	14
Net income (loss) attributable to Acacia Research Corporation	\$ 80,239	\$ 38,348	\$ 6,148	(\$ 11,291)	\$ 634	(\$ 7,608)	(\$ 5,757)	(\$ 4,384)
Net income (loss) attributable to common shareholders - basic	\$ 65,180	\$ 30,529	\$ 4,201	(\$ 12,185)	\$ 327	(\$ 7,608)	(\$ 5,757)	(\$ 4,384)
Basic income (loss) per share	\$ 1.34	\$ 0.63	\$ 0.09	(\$ 0.24)	\$ 0.01	(\$ 0.15)	(\$ 0.12)	(\$ 0.09)
Weighted-average number of shares outstanding, basic	48,508,903	48,467,885	48,457,620	49,875,396	49,875,750	49,828,361	49,696,016	49,655,881
Net loss attributable to common stockholders - diluted	\$ 65,352	\$ 29,204	\$ 4,201	(\$ 12,185)	(\$ 2,624)	(\$ 7,608)	(\$ 5,757)	(\$ 4,384)
Diluted net income (loss) per common share	\$ 1.33	\$ 0.32	\$ 0.09	(\$ 0.24)	(\$ 0.05)	(\$ 0.15)	(\$ 0.12)	(\$ 0.09)
Weighted average number of shares outstanding - diluted	49,244,141	90,624,702	49,033,824	49,875,396	54,406,835	49,828,361	49,696,016	49,655,881

19. SUBSEQUENT EVENTS

On January 29, 2021, the Company redeemed \$50 million of the New Notes, and the parties agreed that the Company will redeem the remaining \$65 million of the principal amount of the New Notes on or before July 15, 2021.

SUBSIDIARIES OF THE REGISTRANT

The following is a listing of the significant subsidiaries of Acacia Research Corporation:

	<u>Jurisdiction of Incorporation</u>
Acacia Global Acquisition LLC and subsidiaries	Delaware
Acacia Research Group, LLC, formerly Acacia Patent Acquisition, LLC and subsidiaries	Delaware

Acacia Global Acquisition LLC and Acacia Research Group, LLC, wholly own multiple consolidated operating subsidiaries, that are included in Acacia Research Corporation's consolidated financial statements included elsewhere herein, each of which are separate and distinct legal entities, and all of which are in the patent acquisition, development, licensing and enforcement business. All of the operating subsidiaries wholly owned by Acacia Global Acquisition LLC and Acacia Research Group, LLC operate in the United States.

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We have issued our report dated March 29, 2021, with respect to the consolidated financial statements included in the Annual Report of Acacia Research Corporation on Form 10-K for the year ended December 31, 2020. We consent to the incorporation by reference of said report in the Registration Statements of Acacia Research Corporation on Form S-3 (File No. 333-249984) and on Forms S-8 (File No. 333-189135 and File No. 333-217878).

GRANT THORNTON LLP

/s/ GRANT THORNTON LLP

Newport Beach, California
March 29, 2021

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Clifford Press, certify that:

1. I have reviewed this Annual Report on Form 10-K of Acacia Research Corporation;
2. Based on my knowledge, this 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 report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present 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 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-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a). Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, 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 report is being prepared;
 - (b). Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c). Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d). Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a). All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b). Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 29, 2021

/s/ Clifford Press
Clifford Press
Chief Executive Officer

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Richard Rosenstein, certify that:

1. I have reviewed this Annual Report on Form 10-K of Acacia Research Corporation;
2. Based on my knowledge, this 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 report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present 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 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-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a). Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, 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 report is being prepared;
 - (b). Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c). Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d). Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a). All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b). Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 29, 2021

/s/ Richard Rosenstein
Richard Rosenstein
Chief Financial Officer

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER AND PRINCIPAL FINANCIAL OFFICER
PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Acacia Research Corporation (the "Company") on Form 10-K for the fiscal year December 31, 2020, as filed with the Securities and Exchange Commission on March 29, 2021 (the "Report"), I, Clifford Press, Chief Executive Officer of the Company, hereby certify, pursuant to Rule 13a-14(b) or Rule 15d-14(b) of the Securities Exchange Act of 1934 and 18 U.S.C. Section 1350, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)); and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 29, 2021

By: /s/ Clifford Press
Clifford Press
Chief Executive Officer

This certification accompanies the Report pursuant to Rule 13a-14(b) or Rule 15d-14(b) under the Securities Exchange Act of 1934 and 18 U.S.C. Section 1350 and shall not be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, or otherwise subject to the liability of that section. This certification will not be deemed to be incorporated by reference into any filing under the Securities Act of 1933 or the Securities Exchange Act of 1934, except to the extent that the Company specifically incorporates it by reference.

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER AND PRINCIPAL FINANCIAL OFFICER
PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Acacia Research Corporation (the "Company") on Form 10-K for the fiscal year December 31, 2020, as filed with the Securities and Exchange Commission on March 29, 2021 (the "Report"), I, Richard Rosenstein, Chief Financial Officer of the Company, hereby certify, pursuant to Rule 13a-14(b) or Rule 15d-14(b) of the Securities Exchange Act of 1934 and 18 U.S.C. Section 1350, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)); and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 29, 2021

By: /s/ Richard Rosenstein
Richard Rosenstein
Chief Financial Officer

This certification accompanies the Report pursuant to Rule 13a-14(b) or Rule 15d-14(b) under the Securities Exchange Act of 1934 and 18 U.S.C. Section 1350 and shall not be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, or otherwise subject to the liability of that section. This certification will not be deemed to be incorporated by reference into any filing under the Securities Act of 1933 or the Securities Exchange Act of 1934, except to the extent that the Company specifically incorporates it by reference.