

AEROGEN INC  
Form 10-Q/A  
August 09, 2004

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

**Washington, DC 20549**

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# FORM 10-Q/A

Amendment No. 1

(Mark One)

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

For the quarterly period ended September 30, 2003

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 0-31913

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**AEROGEN, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**33-0488580**

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

**2071 Stierlin Court, Suite 100**

**Mountain View, CA**

(Address of principal executive offices)

**94043**

(Zip Code)

Registrant's telephone number, including area code: **(650) 864-7300**

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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 (the Exchange Act ) during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

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

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As of November 10, 2003, there were 4,165,971 shares of the Registrant's Common Stock, par value \$0.001, outstanding.







**EXPLANATORY NOTE**



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We are filing this Amendment No. 1 to our Quarterly Report on Form 10-Q for the quarter ended September 30, 2003 as an exhibit-only filing in connection with the resolution of a confidential treatment request made to the Securities and Exchange Commission. This Amendment No. 1 on Form 10-Q/A does not reflect any events occurring after the date of filing of the original Form 10-Q, or otherwise modify or update any of the information contained therein.

We are refiling Exhibit 10.17, Distribution and Supply Agreement, dated as of September 30, 2003, between Aerogen, Inc. and Medical Industries America, Inc. Confidential treatment has been requested for certain portions of Exhibit 10.17.

**SIGNATURES**

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Pursuant to the requirements of the Securities Exchange Act of 1934, as amended (the Exchange Act ), the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

AEROGEN, INC.

Dated: August 5, 2004

By:

/s/ Jane E. Shaw, Ph.D.

Jane E. Shaw, Ph.D.

*Chairman and Chief Executive Officer*

Dated: August 5, 2004

By:

/s/ Robert S. Breuil

Robert S. Breuil

*Chief Financial Officer*

**INDEX TO EXHIBIT**

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### Exhibit No.

<b>Exhibit Number</b>	<b>Description of Document</b>
3.2(1)	Amended and Restated Certificate of Incorporation of Aerogen, Inc.
3.2.1(5)	Certificate of Amendment to the Amended and Restated Certificate of Incorporation of Aerogen, Inc.
3.4(2)	Amended and Restated Bylaws of Aerogen, Inc.
4.1(3)	Debenture dated as of September 9, 2003, issued by the Company to SF Capital.
4.2(4)	Warrant dated as of September 9, 2003, issued by the Company to SF Capital.
4.3(5)	Debenture dated as of November 3, 2003, issued by the Company to SF Capital.
4.4(5)	Warrant dated as of November 3, 2003, issued by the Company to SF Capital.
10.17(6)	Distribution and supply agreement, dated as of September 30, 2003, between the Company and Medical Industries America, Inc.
31.1(5)	Certification required by Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended.
31.2(5)	Certification required by Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended.
31.3	Certification required by Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended.
31.4	Certification required by Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended.
32.1(5)	Certifications required by Rule 13a-14(b) or Rule 15d-14(b) and Section 1350 of Chapter 63 to Title 18 of the United States Code (18 U.S.C. 1350).

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(1) Incorporated by reference to the exhibit with corresponding number from the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2002, filed August 13, 2002.

(2) Incorporated by reference to the Company's Registration Statement on Form S-1 (No. 333-44470), filed August 25, 2000.

(3) Incorporated by reference to Exhibit 10.15 of the Company's Report on Form 8-K filed on October 7, 2003.

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- (4) Incorporated by reference to Exhibit 10.16 of the Company's Report on Form 8-K filed on October 7, 2003.
  
- (5) Previously filed.

(6) Confidential treatment has been requested for portions of this exhibit.