

Edgar Filing: PHARMANETICS INC - Form SC 13D/A

PHARMANETICS INC
Form SC 13D/A
October 14, 2003

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

SCHEDULE 13D

Under the Securities Exchange Act of 1934

(Amendment No. 1)

Pharmanetics, Inc.

(Name of Issuer)

Common Stock

(Title of Class of Securities)

71713J107
(CUSIP Number)

Gregory Maloblocki, Esq.
Bayer Corporation
63 North Street
Medfield, MA
02052-1688

with a copy to:
Marilyn Mooney, Esq.
Fulbright & Jaworski L.L.P.
801 Pennsylvania Avenue, NW
Washington, D.C. 20004-2623

(Name, Address and Telephone Number of Person
Authorized to Receive Notices and Communications)

January 1, 2003

(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of ss.ss. 240.13d-1(e), 240.13d-1(f), or 240.13d-1(g), check the following box. []

Note: Schedules filed in paper format shall include a signed original and five copies of this Schedule, including all exhibits. See Rule 240.13d-7 for other parties to whom copies are to be sent.

*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act

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but shall be subject to all other provisions of the Act (however, see the Notes).

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- 1 NAME OF REPORTING PERSON
I.R.S. IDENTIFICATION NO. OF ABOVE PERSON
Bayer Corporation
- 2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP
(a) ☐ ☐
(b) ☐ ☐
- 3 SEC USE ONLY
- 4 SOURCE OF FUNDS
- 5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO
ITEMS 2(d) OR 2(e)
☐
- 6 CITIZENSHIP OR PLACE OF ORGANIZATION
Indiana
- 7 SOLE VOTING POWER
0
- 8 SHARED VOTING POWER
2,050,000
- 9 SOLE DISPOSITIVE POWER
0
- 10 SHARED DISPOSITIVE POWER
2,050,000
- 11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON
2,050,000
- 12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES SHARES
☐
- 13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)
20.9%
- 14 TYPE OF REPORTING PERSON
CO

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- 1 NAME OF REPORTING PERSON
S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON
Bayer Aktiengesellschaft
- 2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

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(a) ☐ ☐

(b) ☐ ☐

3 SEC USE ONLY

4 SOURCE OF FUNDS

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO
ITEMS 2(d) OR 2(e)
☐ ☐

6 CITIZENSHIP OR PLACE OF ORGANIZATION
Federal Republic of Germany

	7	SOLE VOTING POWER 0
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	8	SHARED VOTING POWER 2,050,000
	9	SOLE DISPOSITIVE POWER 0
	10	SHARED DISPOSITIVE POWER 2,050,000

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON
2,050,000

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES SHARES
☐ ☐

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)
20.9%

14 TYPE OF REPORTING PERSON
CO

1 NAME OF REPORTING PERSON
S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON
Bayer HealthCare LLC

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP
(a) ☐ ☐
(b) ☐ ☐

3 SEC USE ONLY

4 SOURCE OF FUNDS

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO
ITEMS 2(d) OR 2(e)
☐ ☐

6 CITIZENSHIP OR PLACE OF ORGANIZATION
Delaware

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	7	SOLE VOTING POWER 0
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	8	SHARED VOTING POWER 2,050,000
	9	SOLE DISPOSITIVE POWER 0
	10	SHARED DISPOSITIVE POWER 2,050,000

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON
2,050,000

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES SHARES
[]

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)
20.9%

14 TYPE OF REPORTING PERSON
00

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Item 2. Identity and Background.

This Statement is also being filed by Bayer HealthCare LLC ("BHC"), a Delaware limited liability company with its principal executive offices located at 511 Benedict Avenue, Tarrytown, NY 10591. BHC is a wholly owned subsidiary of the Company. The Company made a capital contribution of its Shares of Common Stock to BHC effective as of January 1, 2003. BHC plans to submit the share certificates to the Issuer for reissuance in its name as record holder.

Information as to the executive officers and directors of the Company, Bayer and BHC is set forth in Exhibits A, B and C hereto.

During the past five years, neither BHC nor, to the Company's knowledge, any of the persons listed in Exhibit A nor, to Bayer's knowledge, any of the persons listed in Exhibit B, nor to BHC's knowledge, any of the persons listed in Exhibit C has been convicted in a criminal proceeding (excluding traffic violations and similar misdemeanors). During the past five years, neither BHC nor, to the Company's knowledge, any of the persons listed in Exhibit A nor, to Bayer's knowledge, any of the persons listed in Exhibit B, nor to BHC's knowledge, any of the persons list in Exhibit C, has been a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws.

Item 5. Interest in Securities of the Issuer.

(a) As a result of the capital contribution from the Company, BHC beneficially owns the same 2,050,000 shares of Common Stock. To the best knowledge of BHC, no director or executive officer thereof beneficially owns any

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shares of Common Stock.

(b) As the Company and BHC are wholly owned subsidiaries of Bayer, the Company, Bayer and BHC share voting and investment power over the 2,050,000 shares.

(c) The Company, Bayer and BHC have not and, to the best knowledge of the Company, Bayer and BHC, no director or executive officer of the Company, Bayer or BHC, has effected any transactions in the Common Stock during the past 60 days.

Item 6. Contracts, Arrangements, Understandings or Relationships with Respect to the Issuer.

As previously reported in the Schedule 13D dated April 23, 2001, the Company has certain preemptive rights to subscribe to new securities issued by the Issuer on a pro rata basis. The Company waived its preemptive rights with respect to the offering by the Issuer of a \$9,580,000 private placement of preferred stock convertible into common stock at \$6.00 per share and warrants for the purchase of an additional 510,932 common shares at \$7.12 per share. In connection therewith, the Issuer and the Company entered that certain Amendment No. 1 to Common Stock Purchase Agreement dated as of April 30, 2003.

This Amendment modifies and amends the Company's registration rights, preemptive rights and transfer restrictions. With respect to registration rights, the Amendment expands the number of demand registration rights available to the Company as long as the Issuer is Form S-3 eligible, provides certain piggyback registration rights to the Company, and addresses the allocation of registration rights as between the Company and holders of the Series B Preferred Stock.

In addition, the Amendment allows the Company's registration rights and preemptive rights to be transferred along with any transfer of its shares. Finally, the Amendment alleviates and clarifies certain transfer restrictions with respect to shares held by the Company.

The description of the Amendment is qualified in its entirety by reference to such amendment, a copy of which is filed as an exhibit to this statement on Schedule 13D.

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Item 7. Material to be Filed as Exhibits.

Exhibit A	Information concerning the Company's executive officers and directors.
Exhibit B	Information concerning Bayer's executive officers and directors.
Exhibit C	Information concerning BHC's executive officers and directors.
Exhibit D	Amendment No. 1 to Common Stock Purchase Agreement made as of April 30, 2003 between Pharmanetics, Inc. and Bayer Corporation

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Signature

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this amendment to this statement is true and correct.

Date: October 14, 2003

BAYER CORPORATION

By: /s/ Joseph A. Akers

Joseph A. Akers
Executive Vice President,
Chief Administrative and Financial Officer

BAYER HEALTHCARE LLC

By: /s/ Frank Wenzel

Frank Wenzel
Vice President, Biltroller
and Chief Accounting Officer

BAYER AKTIENGESELLSHAFT

By: /s/ Klaus Kuehn

Klaus Kuehn
Member, Board of Management

Exhibit A

DIRECTORS AND EXECUTIVE OFFICERS OF BAYER CORPORATION

The name, business address, and present principal occupation or employment of each of the directors and executive officers of Bayer Corporation are set forth below. Unless otherwise indicated, the business address of each such director and executive officer is Bayer Corporation, 100 Bayer Road, Pittsburgh, PA 15205-9741. All the directors and executive officers listed below are citizens of the United States, except for Dr. Attila Molnar, Dr. Franz-Josef Berners and Dr. Richard Pott, who are citizens of the Federal Republic of Germany, Ian Paterson, who is a citizen of the United Kingdom, and Emil Lansu, who is a citizen of The Netherlands.

NAME AND BUSINESS ADDRESS

PRESENT PRINCIPAL OCCUPATION OR EMPLOYMENT

Dr. Attila Molnar..... Director, President and Chief Executive Officer

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Dr. Franz-Joseph Berners.....	Director
Bayer AG	
Bayer-Werk	
51368 Leverkusen	
Leverkusen, Germany	
Dr. Richard Pott.....	Director
Bayer AG	
Bayer-Werk	
51368 Leverkusen	
Leverkusen, Germany	
Joseph A. Akers.....	Executive Vice President, Chief Administrative and Financial Officer
Gary S. Balkema.....	Executive Vice President, Healthcare
Bayer HealthCare LLC	
511 Benedict Avenue	
Tarrytown, NY 10591	
Emil Lansu.....	Executive Vice President, CropScience
Bayer CropScience LP	
2 TW Alexander Drive	
Research Triangle Park, NC 27709	
Randall S. Dearth.....	Executive Vice President, Chemicals
Ian Paterson.....	Executive Vice President, Polymers

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Exhibit B

DIRECTORS AND EXECUTIVE OFFICERS OF BAYER AG

The name, business address, and present principal occupation or employment of each of the directors and executive officers of Bayer AG are set forth below. Unless otherwise indicated, the business address of each such director or executive officer is Bayer Aktiengesellschaft, D-51368 Leverkusen, Federal Republic of Germany. All the directors and executive officers listed below are citizens of the Federal Republic of Germany, except for Mr. Kornblum, who is a U.S. citizen, Mr. Achleitner, who is a citizen of Austria and Mr. Ackermann, who is a citizen of Switzerland.

NAME AND BUSINESS ADDRESS - - - - -	PRESENT PRINCIPAL OCCUPATION OR EMPLOYMENT - - - - -
Werner Wenning.....	Chairman, Board of Management.
Klaus Kuehn.....	Member, Board of Management.
Dr. Udo Oels.....	Member, Board of Management.
Richard Pott.....	Member, Board of Management.
Dr. Manfred Schneider.....	Chairman, Supervisory Board.
Erhard Gipperich.....	Vice Chairman, Supervisory Board; Chairman, Works Council.
Dr. Paul Achleitner.....	Member, Supervisory Board;
Allianz AG	Member of Board of Management, Allianz AG.
Koniginstr. 28	
80802 Munchen, Germany	
Dr. Josef Ackermann.....	Member, Supervisory Board;
Deutsche Bank AG	Spokesman of the Board of Managing Directors
Taunusanlage 12	and Chairman of the Group Executive Committee

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60325 Frankfurt, Germany	of Deutsche Bank AG.
Karl-Josef Ellrich.....	Member, Supervisory Board; Chairman, Works
Bayer AG, Dormagen Plant	Council, Dormagen plant, Bayer AG.
41538 Dormagen, Germany	
Thomas Hellmuth.....	Member, Supervisory Board;
Bayer CropScience AG	Agricultural Engineer, Langenfeld, Bayer AG.
Elisabeth-Selbert-Str. 4a	
40764 Langenfeld, Germany	
Prof. Dr. Ing. e.h. Hans-Olaf Henkel.....	Member, Supervisory Board;
Gottfried Wilhelm Leibniz e.V.	President of Leibniz Association;
Friedrichstr. 81	Vice President of the Federation of German Industry.
10117 Berlin, Germany	
Dr. h.c. Martin Kohlhaussen.....	Member, Supervisory Board; Chairman of
Commerzbank AG	the Supervisory Board, Commerzbank AG.
Kaiserplatz	
60261 Frankfurt am Main, Germany	
John Christian Kornblum.....	Member, Supervisory Board;
Lazard & Co. GmbH	Chairman of Bankhaus Lazard.
Pariser Platz 4a	
10117 Berlin, Germany	
Petra Kronen.....	Member, Supervisory Board;
Bayer AG, Uerdingen Plant	Chairman, Works Council, Uerdingen
47812 Krefeld, Germany	plant, Bayer AG.

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NAME AND BUSINESS ADDRESS	PRESENT PRINCIPAL OCCUPATION OR EMPLOYMENT
-----	-----
Dr. Heinrich von Pierer.....	Member, Supervisory Board;
Siemens AG	President and Chief Executive Officer,
Wittelsbacherplatz 2	Siemens AG.
80333 Munchen, Germany	
Wolfgang Schenk.....	Member, Supervisory Board;
	Graduate Engineer, Bayer AG.
Hubertus Schmoldt.....	Member, Supervisory Board;
IG Bergbau, Chemie, Energie	Chairman, German Mine, Chemical and
Konigsworther Platz 6	Power Workers Union.
30167 Hannover, Germany	
Dieter Schulte.....	Member, Supervisory Board;
German Trade Union Federation DGB	Former Chairman of the German Unions Federation.
10178 Berlin, Germany	
Dipl.-Ing. Dr. Ing E.h. Jurgen Weber.....	Member, Supervisory Board; Chairman of
Deutsche Lufthansa AG	the Management Board, Deutsche Lufthansa AG.
von Gablenz - Str. 2 - 6	
50679 Koln, Germany	
Sigfried Wendlandt.....	Member, Supervisory Board; North Rhine
IG Bergbau, Chemie, Energie	District Secretary of the German Mine,
Hans-Bockler - Str. 39	Chemical and Power Workers Union.
40476 Dusseldorf, Germany	
Reinhard Wendt.....	Member, Supervisory Board; Printer, Walsrode,
Wolff Walsrode AG	Bayer AG.
29655 Walsrode, Germany	
Thomas de Win.....	Member, Supervisory Board; Commercial Clerk,
	Pulheim, Bayer AG.

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Prof. Dr. Ernst-Ludwig Winnacker..... Member, Supervisory Board; University Professor.
 Deutsche Forschungsgemeinschaft
 Kennedyallee 40
 53175 Bonn, Germany

Dr. Hermann Wunderlich..... Member, Supervisory Board.
 Arndtstrasse 8
 51519 Odenthal, Germany

Exhibit C

DIRECTORS AND EXECUTIVE OFFICERS OF BAYER HEALTHCARE LLC

The name, business address, and present principal occupation or employment of each of the directors and executive officers of Bayer HealthCare LLC are set forth below. Unless otherwise indicated, the business address of each such director and executive officer is Bayer HealthCare LLC, 511 Benedict Avenue, Tarrytown, NY 10591. All the directors and executive officers listed below are citizens of the United States, except for Dr. Attila Molnar, Markus Arnold, Dr. Gunnar Riemann, Wolfgang Hartwig, and Dr. Frank Wenzel who are citizens of the Federal Republic of Germany, and Rolf Classon, who is a citizen of Sweden.

NAME AND BUSINESS ADDRESS	PRESENT PRINCIPAL OCCUPATION OR EMPLOYMENT
-----	-----
Dr. Attila Molnar..... Bayer Corporation 100 Bayer Road Pittsburgh, PA 15205-9741	Director and Chairman
Rolf A. Classon.....	Director and President and CEO
Joseph A. Akers..... Bayer Corporation 100 Bayer Road Pittsburgh, PA 15205-9741	Director
Markus Arnold.....	Director Senior Vice President and Senior Administrative Officer
Dr. Gunnar Riemann..... Bayer HealthCare LLC 79 TW Alexander Drive Research Triangle Park, NC 27709	President, Biological Products Division and Executive Vice President
Gary S. Balkema..... Bayer HealthCare LLC 36 Columbia Road P.O. Box 1910 Morristown, NJ 07962	President, Consumer Care Division and Executive Vice President
Wolfgang Hartwig.....	Director Director President, Diagnostics Division and Executive Vice President
John B. Payne..... Bayer HealthCare LLC 12707 Shawnee Mission Parkway Shawnee, KS 66216-1846	President, Animal Health Division and Senior Vice President
Dr. Frank Wenzel..... Bayer Corporation 100 Bayer Road Pittsburgh, PA 15205-9741	Vice President, Biltroller and Chief Accounting Officer

