

INTROGEN THERAPEUTICS INC

Form 10-K/A

November 06, 2006

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

**Form 10-K/A  
(Amendment No. 1)**

(Mark One)

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

**For the fiscal year ended December 31, 2005.**

**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: 000-21291**

**Introgen Therapeutics, Inc.**

*(Exact name of registrant as specified in its charter)*

**Delaware**

*(State or other jurisdiction of  
incorporation or organization)*

**74-2704230**

*(I.R.S. Employer  
Identification Number)*

**301 Congress Avenue, Suite 1850**

**Austin, Texas**

*(Address of principal executive offices)*

**78701**

*(Zip Code)*

**Registrant's telephone number, including area code:**

**(512) 708-9310**

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

**None**

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

**Common Stock, \$0.001 par value per share**

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 such filing requirements for the past 90 days. Yes  No

No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer  Accelerated filer  Non-accelerated filer

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

The aggregate market value of the voting stock (common stock) held by non-affiliates of the Registrant, as of the last day of the Registrant's second fiscal quarter, was approximately \$130.7 million based upon the last sale price reported on the Nasdaq National Market for June 30, 2005. For purposes of this disclosure, shares of common stock held by persons holding more than 5% of the outstanding shares of the Registrant's common stock and shares held by executive officers and directors of the Registrant have been excluded because such persons may be deemed to be affiliates. This determination is not necessarily conclusive.

As of March 13, 2005, the Registrant had 37,180,053 shares of common stock, \$0.001 par value per share, issued and outstanding.

#### **DOCUMENTS INCORPORATED BY REFERENCE**

Certain information required by Items 10, 11, 12, 13 and 14 of Form 10-K is incorporated by reference to the Registrant's proxy statement (2006 Proxy Statement) for the 2006 Annual Stockholders Meeting, which was filed with the Securities and Exchange Commission on April 13, 2006.

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**EXPLANATORY NOTE**

This Amendment No. 1 to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2005 ( Amendment No. 1 ) for Introgen Therapeutics, Inc. ( Company ) is being filed solely to correct Exhibit 23.1 of the originally filed Annual Report on Form 10-K for the year ended December 31, 2005. In addition, in connection with the filing of this Amendment No. 1 and pursuant to the rules of the Securities and Exchange Commission, the Company is including with this Amendment No. 1 certain currently dated certifications. Except for the correction of Exhibit 23.1 and the currently dated certifications, the Company has no further changes to the originally filed Annual Report on Form 10-K.

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**INTROGEN THERAPEUTICS, INC.  
ANNUAL REPORT ON FORM 10-K  
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| <u>Certification of CEO and CFO Pursuant to Rule 13a-14(a) and Rule 15d-14(a)</u> |   |
| <u>Certification of CEO and CFO Pursuant to Section 906</u>                       |   |

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**PART IV**

**Item 15. Exhibits and Financial Statement Schedules**

(a) The following documents are filed as part of this Amendment No. 1 to Annual report on Form 10-K:

*3. Exhibits*

**Exhibit**

**Number**

**Description of Document**

|      |   |
|------|---|
| 23.1 | Consent of Independent Registered Public Accounting Firm  |
| 31.1 | Certification of Chief Executive Officer and Chief Financial Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act, as amended         |
| 32.1 | Certification of Chief Executive Officer and Chief Financial Officer Pursuant to 18 U.S.C. 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 |

(b) See Item 15(a)(3) above.

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**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this Amendment No. 1 to the Annual Report on Form 10-K to be signed on its behalf by the undersigned, thereunto duly authorized.

INTROGEN THERAPEUTICS, INC.

By: /s/ DAVID G. NANCE  
 David G. Nance  
*President, Chief Executive Officer and  
 Director*  
*(Principal Executive Officer)*

By: /s/ JAMES W. ALBRECHT, JR.  
 James W. Albrecht, Jr.  
*Chief Financial Officer*  
*(Principal Financial and Accounting  
 Officer)*

Date: November 6, 2006

**POWER OF ATTORNEY**

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, this Annual Report on Form 10-K has been signed on behalf of the Registrant by the following persons in the capacities and on the dates indicated:

| <b>Signature</b>  | <b>Title</b>  | <b>Date</b>      |
|---|---|------------------|
| /s/ DAVID G. NANCE<br><br>(David G. Nance)                | President, Chief Executive Officer, and<br>Director (Principal Executive Officer) | November 6, 2006 |
| /s/ JAMES W. ALBRECHT, JR<br><br>(James W. Albrecht, Jr.) | Chief Financial Officer (Principal<br>Financial and Accounting Officer)           | November 6, 2006 |
| *<br><br>(John N. Kapoor, Ph.D.)                          | Chairman of the Board and Director  | November 6, 2006 |
| *<br><br>(William H. Cunningham, Ph.D.)                   | Director  | November 6, 2006 |
| *<br><br>(Malcolm Gillis, Ph.D.)                          | Director  | November 6, 2006 |
| *<br><br>(Malcolm Gillis, Ph.D.)                          | Director  | November 6, 2006 |

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(Charles E. Long)

\*

Director

November 6, 2006

(Peter Barton Hutt)

\*By: /s/ JAMES W. ALBRECHT, JR

(James W. Albrecht, Jr.)  
*Attorney-in-Fact*

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**EXHIBIT INDEX**

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