

OSCIENT PHARMACEUTICALS CORP  
Form 8-K  
January 04, 2007

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# SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

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## FORM 8-K

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### CURRENT REPORT

Pursuant to

Section 13 or 15(d) of

**THE SECURITIES EXCHANGE ACT OF 1934**

Date of Report (Date of Earliest Event Reported): December 28, 2006

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## OSCIENT PHARMACEUTICALS CORPORATION

(Exact name of registrant as specified in its charter)

Massachusetts  
(State or other jurisdiction  
of incorporation)

0-10824  
(Commission File Number)

04-2297484  
(I.R.S. Employer

Identification Number)

1000 Winter Street, Suite 2200

Waltham, Massachusetts 02451

(Address of principal executive offices, including zip code)

(781) 398-2300

(Registrant's telephone number, including area code)

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## Edgar Filing: OSCIENT PHARMACEUTICALS CORP - Form 8-K

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**ITEM 1.01. ENTRY INTO A MATERIAL DEFINITIVE AGREEMENT.**

Oscient Pharmaceuticals Corporation (the Company) entered into a License, Supply and Marketing Agreement with Menarini International Operation Luxembourg SA, a wholly-owned subsidiary of Menarini Industrie Farmaceutiche Riunite S.r.l. (Menarini), dated December 28, 2006, whereby the Company sublicensed its rights to sell FACTIVE® (gemifloxacin mesylate) tablets in the European Union to Menarini (the Menarini Agreement). Under the terms of the Menarini Agreement, Menarini is responsible for obtaining regulatory approval for FACTIVE in the European Union, and the Company has agreed to reimburse Menarini for expenses associated with such regulatory development up to an agreed limit. Menarini has agreed to pay the Company an up-front, non-refundable license fee payment. Menarini has also agreed to pay the Company milestone payments upon obtaining certain regulatory and reimbursement approvals and upon achieving certain annual net sales goals, which could total up to \$23 million, if all the milestones are achieved. Menarini will pay the Company a transfer price on purchases of the active pharmaceutical ingredient (API) for FACTIVE, which is determined based on a percentage of quarterly sales of FACTIVE in the European Union. Pursuant to the Menarini Agreement, Menarini is obligated to exclusively purchase from the Company, and the Company must exclusively supply, all API for FACTIVE to be sold in Europe for the earlier to occur of the expiration of the life of certain patents covering the product or expiration of data exclusivity.

The Menarini Agreement may be terminated by either party upon the occurrence of certain termination events, including Menarini's right to terminate if the European regulatory authorities do not recommend approval of FACTIVE at various stages of the approval process with a package insert, or label, that meets certain requirements as to the indications for which FACTIVE may be prescribed, safety and dosing. Menarini may also terminate the agreement if it does not receive approval for reimbursement from European member countries that is above a certain minimum price per tablet. Upon termination of the Menarini Agreement, Menarini is obligated to assign any and all rights to regulatory approvals in the European Union to the Company or its designee.

On January 4, 2007, the Company issued a press release announcing the Menarini Agreement. A copy of that press release is furnished with this Current Report on Form 8-K as Exhibit 99.1.

**ITEM 9.01. FINANCIAL STATEMENTS AND EXHIBITS.**

(d) Exhibits

99.1 Press Release issued by Oscient Pharmaceuticals Corporation on January 4, 2007.

SIGNATURE

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

OSCIENT PHARMACEUTICALS CORPORATION

By: /s/ Philippe M. Maitre

Name: Philippe M. Maitre

Title: Senior Vice President and Chief Financial Officer

Date: January 4, 2007