

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<br>0                |
| NUMBER OF<br>SHARES<br>BENEFICIALLY<br>OWNED BY<br>EACH<br>REPORTING<br>PERSON<br>WITH | 8  | SHARED VOTING POWER<br>2,050,000      |
|  | 9  | SOLE DISPOSITIVE POWER<br>0           |
|  | 10 | SHARED DISPOSITIVE POWER<br>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<br>SHARES | 8  | SHARED VOTING POWER      |
| BENEFICIALLY        |    | 2,050,000                |
| OWNED BY            |    |                          |
| EACH                | 9  | SOLE DISPOSITIVE POWER   |
| REPORTING           |    | 0                        |
| PERSON              |    |                          |
| WITH                | 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<br>0  |
| NUMBER OF<br>SHARES<br>BENEFICIALLY<br>OWNED BY<br>EACH<br>REPORTING<br>PERSON<br>WITH | 8  | SHARED VOTING POWER<br>2,050,000  |
|  | 9  | SOLE DISPOSITIVE POWER<br>0   |
|  | 10 | SHARED DISPOSITIVE POWER<br>2,050,000   |
| 11   |    | AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON<br><br>2,050,000 |
| 12   |    | CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES SHARES<br>[ ]          |
| 13   |    | PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)<br>20.9%                   |
| 14   |    | TYPE OF REPORTING PERSON<br>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<br>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;<br>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<br>Karl-Josef Ellrich.....<br>Bayer AG, Dormagen Plant<br>41538 Dormagen, Germany               | of Deutsche Bank AG.<br>Member, Supervisory Board; Chairman, Works<br>Council, Dormagen plant, Bayer AG.                |
| Thomas Hellmuth.....<br>Bayer CropScience AG<br>Elisabeth-Selbert-Str. 4a<br>40764 Langenfeld, Germany                   | Member, Supervisory Board;<br>Agricultural Engineer, Langenfeld, Bayer AG.  |
| Prof. Dr. Ing. e.h. Hans-Olaf Henkel.....<br>Gottfried Wilhelm Leibniz e.V.<br>Friedrichstr. 81<br>10117 Berlin, Germany | Member, Supervisory Board;<br>President of Leibniz Association;<br>Vice President of the Federation of German Industry. |
| Dr. h.c. Martin Kohlhaussen.....<br>Commerzbank AG<br>Kaiserplatz<br>60261 Frankfurt am Main, Germany                    | Member, Supervisory Board; Chairman of<br>the Supervisory Board, Commerzbank AG.  |
| John Christian Kornblum.....<br>Lazard & Co. GmbH<br>Pariser Platz 4a<br>10117 Berlin, Germany                           | Member, Supervisory Board;<br>Chairman of Bankhaus Lazard.  |
| Petra Kronen.....<br>Bayer AG, Uerdingen Plant<br>47812 Krefeld, Germany   | Member, Supervisory Board;<br>Chairman, Works Council, Uerdingen<br>plant, Bayer AG.                                    |

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| NAME AND BUSINESS ADDRESS<br>-----  | PRESENT PRINCIPAL OCCUPATION OR EMPLOYMENT<br>-----   |
|---|---|
| Dr. Heinrich von Pierer.....<br>Siemens AG<br>Wittelsbacherplatz 2<br>80333 Munchen, Germany                          | Member, Supervisory Board;<br>President and Chief Executive Officer,<br>Siemens AG.                                   |
| Wolfgang Schenk.....  | Member, Supervisory Board;<br>Graduate Engineer, Bayer AG.  |
| Hubertus Schmoltd.....<br>IG Bergbau, Chemie, Energie<br>Konigsworther Platz 6<br>30167 Hannover, Germany             | Member, Supervisory Board;<br>Chairman, German Mine, Chemical and<br>Power Workers Union.                             |
| Dieter Schulte.....<br>German Trade Union Federation DGB<br>10178 Berlin, Germany                                     | Member, Supervisory Board;<br>Former Chairman of the German Unions Federation.  |
| Dipl.-Ing. Dr. Ing E.h. Jurgen Weber.....<br>Deutsche Lufthansa AG<br>von Gablenz - Str. 2 - 6<br>50679 Koln, Germany | Member, Supervisory Board; Chairman of<br>the Management Board, Deutsche Lufthansa AG.                                |
| Sigfried Wendlandt.....<br>IG Bergbau, Chemie, Energie<br>Hans-Bockler - Str. 39<br>40476 Dusseldorf, Germany         | Member, Supervisory Board; North Rhine<br>District Secretary of the German Mine,<br>Chemical and Power Workers Union. |
| Reinhard Wendt.....<br>Wolff Walsrode AG<br>29655 Walsrode, Germany   | Member, Supervisory Board; Printer, Walsrode,<br>Bayer AG.  |
| Thomas de Win.....  | Member, Supervisory Board; Commercial Clerk,<br>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.....<br>Bayer Corporation<br>100 Bayer Road<br>Pittsburgh, PA 15205-9741                       | Director and Chairman   |
| Rolf A. Classon.....<br>Joseph A. Akers.....<br>Bayer Corporation<br>100 Bayer Road<br>Pittsburgh, PA 15205-9741 | Director and President and CEO<br>Director  |
| Markus Arnold.....   | Director Senior Vice President and<br>Senior Administrative Officer               |
| Dr. Gunnar Riemann.....<br>Bayer HealthCare LLC<br>79 TW Alexander Drive<br>Research Triangle Park, NC 27709     | President, Biological Products Division<br>and Executive Vice President           |
| Gary S. Balkema.....<br>Bayer HealthCare LLC<br>36 Columbia Road<br>P.O. Box 1910<br>Morristown, NJ 07962        | President, Consumer Care Division<br>and Executive Vice President                 |
| Wolfgang Hartwig.....  | Director Director President, Diagnostics Division<br>and Executive Vice President |
| John B. Payne.....<br>Bayer HealthCare LLC<br>12707 Shawnee Mission Parkway<br>Shawnee, KS 66216-1846            | President, Animal Health Division<br>and Senior Vice President                    |
| Dr. Frank Wenzel.....<br>Bayer Corporation<br>100 Bayer Road<br>Pittsburgh, PA 15205-9741                        | Vice President, Biltroller<br>and Chief Accounting Officer                        |

