

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

**FORM 8-K**

**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of  
The Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported)  
**May 1, 2007**

**VIVUS, INC.**

(Exact name of registrant as specified in its charter)

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

**000-23490**  
(Commission File Number)

**94-3136179**  
(IRS Employer  
Identification No.)

**1172 CASTRO STREET  
MOUNTAIN VIEW, CA 94040**  
(Address of principal executive offices, including zip code)

**(650) 934-5200**  
(Registrant's telephone number, including area code)

**N/A**  
(Former name or former address, if changed since last report)

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))

**Item 1.02. Termination of a Material Definitive Agreement.**

In preparation for the closing of a transaction with KV Pharmaceutical Company ("KV"), VIVUS, Inc. ("the Company"), at its option and in accordance with the terms of the Note Purchase Agreement dated January 8, 2004 (the "Line of Credit"), paid off all amounts owed to Tanabe Holding America, Inc. ("Tanabe") under the Line of Credit. The Company and Tanabe also mutually agreed to terminate the Line of Credit. In connection with the repayment of amounts owed under the Line of Credit, on May 1, 2007, Tanabe executed a Termination and Release (the "Release"). The Release acknowledges the payment of \$6.7 million by the Company as payment in full of the principal and interest due under the notes issued under the Line of Credit (the "Notes") and the release of the lien that Tanabe held on the Company's assets (excluding the Company's land and buildings) as collateral for the Notes. Neither the Company nor Tanabe incurred any termination penalties in connection with the termination of the Line of Credit.

On March 30, 2007, the Company announced it had entered into a definitive agreement with KV to transfer its assets related to the investigational product candidate, EvaMist™, and the grant of a sublicense of the rights to EvaMist under the Company's license agreement with Acrux Ltd. to KV (the "Transaction"). EvaMist is the Company's investigational metered dose transdermal spray for the treatment of menopause symptoms. The closing of the Transaction is expected to occur by mid 2007. Under the terms of the transaction, the Company is eligible to receive an upfront payment of \$10 million at closing and an additional \$140 million upon approval of the New Drug Application for EvaMist, currently under review by the Food and Drug Administration.

The Company and Tanabe Seiyaku Co., Ltd., Tanabe's parent, remain parties to a Development, Licensing and Supply Agreement dated January 22, 2001 for the development of avanafil, an oral PDE5 inhibitor product candidate for the treatment of erectile dysfunction (the "Development Agreement"). Under the

terms of the Development Agreement, the Company paid a \$2.0 million license fee obligation to Tanabe Seiyaku Co., Ltd. in the year ended December 31, 2006 and expects to make other substantial payments to Tanabe Seiyaku Co., Ltd. in accordance with the Development Agreement, including, without limitation, payments based on certain development, regulatory and sales milestones as well as royalty payments on any future product sales.

A copy of the Release is attached as Exhibit 10.61 and is incorporated by reference herein. The above descriptions of the agreements noted herein are summaries only and are qualified in their entirety by reference to Exhibit 10.61 to this Current Report on Form 8-K and Exhibits 10.42 and 10.52 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2006.

**Item 9.01. Financial Statements and Exhibits**

**(d) Exhibits.**

<u>Exhibit No.</u>	<u>Description</u>
<b>10.61</b>	Termination and Release executed by Tanabe Holding America, Inc. dated May 1, 2007.

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**SIGNATURES**

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.

VIVUS, INC.

By: /s/ Lee B. Perry

**Lee B. Perry**

**Vice President and Chief Accounting Officer**

Date: May 4, 2007

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**EXHIBIT INDEX**

<u>Exhibit No.</u>	<u>Description</u>
<b>10.61</b>	Termination and Release executed by Tanabe Holding America, Inc. dated May 1, 2007.

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## TERMINATION AND RELEASE

Reference is made to the Note Purchase Agreement, dated as of January 8, 2004 (as the same may from time to time have been amended, restated, or otherwise modified, the "**Purchase Agreement**") by and between VIVUS, Inc., a Delaware corporation ("**Borrower**"), and Tanabe Holding America, Inc. ("**Secured Party**"). All capitalized terms defined in the Purchase Agreement are used with the same meanings, unless otherwise defined, in this Termination and Release.

By its signature below, the Secured Party hereby acknowledges payment in full of the principal of and interest on all Notes, and all other amounts and obligations owing, under the Transaction Documents (such amounts, collectively, the "**Obligations**") and releases all liens, pledges, charges, security interests and other encumbrances created in favor of the Secured Party pursuant to the Transaction Documents. In connection therewith, the Secured Party hereby (i) agrees to promptly cause to be assigned, transferred and delivered to the Company all collateral under the Transaction Documents, and money received in respect thereof, held by the Secured Party under the Transaction Documents, (ii) agrees to promptly execute and deliver to the Company such instruments of satisfaction and other documents as shall be reasonably requested by the Company to terminate of record such liens, pledges, charges, security interests or other encumbrances, (iii) agrees to promptly file the UCC-3 termination statement attached hereto as Exhibit A with the Delaware Secretary of State and to file any other UCC financing statements or other documents necessary to evidence the release of Secured Party's security interests in any of Borrower's property or assets, (iv) agrees to promptly deliver such termination notices or other notices terminating Secured Party's security interest to third parties, and (v) authorizes the Company to take such further actions as may be necessary to terminate of record such liens, pledges, charges, security interests or other encumbrances to evidence the termination of the loans and all security interests in favor of Secured Party.

This Termination and Release shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the Secured Party has caused this Termination and Release to be duly executed as of the 1<sup>st</sup> day of May, 2007.

**TANABE HOLDING AMERICA, INC.**

By: /s/ Yoshi Saso  
 Name: Yoshi Saso  
 Title: President and CEO

EXHIBIT A

## UCC-3 FINANCING STATEMENT AMENDMENT

**UCC FINANCING STATEMENT AMENDMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

## A. NAME &amp; PHONE OF CONTACT AT FILER [optional]

Nancy Bouch 650-496-7543

## B. SEND ACKNOWLEDGMENT TO: (Name and Address)

Wilson Sonsini Goodrich & Rosati  
 650 Page Mill Road  
 FH 2-1 P10  
 Palo Alto, CA 94304

NBOUCH@WSGR.COM

**THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY**

1a. INITIAL FINANCING STATEMENT FILE #  
 40524720 2/25/2004

1b. This FINANCING STATEMENT AMENDMENT is  
 to be filed [for record] (or recorded) in the REAL  
 o ESTATE RECORDS.

2 x TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3. o CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4. o ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 9.

5. AMENDMENT (PARTY INFORMATION): This Amendment affects o Debtor or o Secured Party of record. Check only one of these two boxes.

Also check one of the following three boxes and provide appropriate information in items 6 and/or 7.

- |   |   |  |
|---|---|--|
| o CHANGE name and/or address: Please refer to the detailed instructions in regards to changing the name/address of a party. | o DELETE name: Give record name to be deleted in item 6a or 6b. | o ADD name: Complete item 7a or 7b, and also item 7c; also complete items 7e-7g (if applicable). |
|---|---|--|

6. CURRENT RECORD INFORMATION:

6a. ORGANIZATION’S NAME  
VIVUS, INC.

OR

6b. INDIVIDUAL’S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

7. CHANGED (NEW) OR ADDED INFORMATION:

7a. ORGANIZATION’S NAME

OR

7b. INDIVIDUAL’S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

7c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

7d. **SEE INSTRUCTIONS**

ADD’L INFO RE ORGANIZATION DEBTOR

7e. TYPE OF ORGANIZATION

7f. JURISDICTION OF ORGANIZATION

7g. ORGANIZATIONAL ID #, if any

o NONE

8. AMENDMENT (COLLATERAL CHANGE): check only one box.  
Describe collateral o deleted or o added, or give entire o restated collateral description, or describe collateral o assigned.

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here o and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION’S NAME  
TANABE HOLDING AMERICA, INC.

OR

9b. INDIVIDUAL’S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

10. OPTIONAL FILER REFERENCE DATA

F#191480  
A#293945

