

SECURITIES AND EXCHANGE COMMISSION

FORM 8-K

Current report filing

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FILER

**EPICEPT CORP**

CIK: **1208261** | IRS No.: **521841431** | Fiscal Year End: **1231**  
Type: **8-K** | Act: **34** | File No.: **000-51290** | Film No.: **13701636**  
SIC: **2834** Pharmaceutical preparations

Mailing Address

777 OLD SAW MILL RIVER  
RD.  
TARRYTOWN NY 10591

Business Address

777 OLD SAW MILL RIVER  
RD.  
TARRYTOWN NY 10591  
914-606-3500

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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):

March 14, 2013

## EpiCept Corporation

(Exact name of registrant as specified in its charter)

Delaware

000-51290

52-1841431

\_\_\_\_\_  
(State or other jurisdiction  
of incorporation)

\_\_\_\_\_  
(Commission  
File Number)

\_\_\_\_\_  
(I.R.S. Employer  
Identification No.)

777 Old Saw Mill River Rd., Tarrytown,  
New York

10591

\_\_\_\_\_  
(Address of principal executive offices)

\_\_\_\_\_  
(Zip Code)

Registrant's telephone number, including area code:

914-606-3500

Not Applicable

\_\_\_\_\_  
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:

- 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.**

**Item 8.01 Other Events.**

On March 14, 2013, EpiCept Corporation ("EpiCept"), EpiCept Israel Ltd. and Immune Pharmaceuticals Ltd. ("Immune") executed an amendment to the Merger Agreement and Plan of Reorganization that they signed on November 7, 2012. The amendment allows Immune additional time to provide its audited financial statements, which are now required by April 15, 2013. The amendment also (i) adjusts the maximum amount of EpiCept's Specified Liabilities at the closing of the merger from \$9 million to \$10 million and (ii)

removes the adjustment to the number of EpiCept shares issuable upon conversion of Immune shares at the closing based on the amount of EpiCept's Specified Liabilities at the closing.

#### Additional Information

In connection with the proposed transaction, EpiCept will file a proxy statement with the U.S. Securities and Exchange Commission (SEC) seeking appropriate stockholder approval. STOCKHOLDERS OF EPICEPT AND OTHER INVESTORS ARE URGED TO READ THE PROXY STATEMENT (INCLUDING ANY AMENDMENTS OR SUPPLEMENTS TO THE PROXY STATEMENT) REGARDING THE PROPOSED TRANSACTION WHEN IT BECOMES AVAILABLE BECAUSE IT WILL CONTAIN IMPORTANT INFORMATION. EpiCept's stockholders will be able to obtain a copy of the proxy statement, as well as other filings containing information about Immune and EpiCept, without charge, at the SEC's Internet site ([www.sec.gov](http://www.sec.gov)). Copies of the proxy statement and any filings with the SEC that are incorporated by reference in the proxy statement can also be obtained, without charge, by directing a request to EpiCept Corporation, 777 Old Saw Mill River Rd, Tarrytown, NY 10591, Attention: Investor Relations, Telephone: (914) 606-3500.

#### Participants in the Solicitation

EpiCept and its directors and executive officers and Immune and its directors and executive officers may be deemed to be participants in the solicitation of proxies from the stockholders of EpiCept in connection with the proposed transaction. Information regarding the special interests of these directors and executive officers in the merger transaction will be included in the proxy statement of EpiCept referred to above. Additional information regarding the directors and executive officers of EpiCept is also included in EpiCept's Annual Report on Form 10-K for the fiscal year ended December 31, 2012, which was filed with the SEC on March 5, 2013. This document is available free of charge at the SEC's web site ([www.sec.gov](http://www.sec.gov)) and from Investor Relations at EpiCept at the address described above.

This communication shall not constitute an offer to sell or the solicitation of an offer to buy any securities, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. No offering of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended (the "Act"). The securities issued in exchange for all of the outstanding shares of Immune will not be and have not been registered under the Act and may not be offered or sold in the United States absent registration or an applicable exception from registration requirements.

The merger agreement and any accompanying issuance of shares by Immune Pharmaceuticals are not, under any circumstances, to be construed as an advertisement or a public offering of securities in Israel. Any public offer or sale of securities in Israel may be made only in accordance with the Israeli Securities Act-1968 (which requires, inter alia, the filing of a prospectus in Israel or an exemption therefrom).

#### **Item 9.01 Financial Statements and Exhibits.**

10.1 Amendment No. 3 to Merger Agreement and Plan of Reorganization, dated as of March 14, 2013, by and among EpiCept Corporation, Epicept Israel Ltd. and Immune Pharmaceuticals Ltd.

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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.

EpiCept Corporation

March 19, 2013

By: /s/ Robert W. Cook

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Name: Robert W. Cook

Title: Interim President and CEO

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Exhibit Index

<u>Exhibit No.</u>	<u>Description</u>
10.1	Amendment No. 3 to Merger Agreement and Plan of Reorganization, dated as of March 14, 2013, by and among EpiCept Corporation, Epicept Israel Ltd. and Immune Pharmaceuticals Ltd.

**AMENDMENT NO. 3 TO MERGER AGREEMENT AND PLAN OF REORGANIZATION**

This Third Amendment to Merger Agreement and Plan of Reorganization (this “**Third Amendment**”), is made as of the 14th day of March, 2013 (the “**Effective Date**”), by and among Immune Pharmaceuticals Ltd. (“**Immune**”) EpiCept Corporation, a Delaware corporation, and EpiCept Israel Ltd., an Israeli company (together, “**EpiCept**” and collectively with Immune, the “**Parties**”). Capitalized terms used herein and not otherwise defined shall have the respective definitions ascribed to them in the Merger Agreement and Plan of Reorganization, dated November 7, 2012 (the “**Merger Agreement**”), as amended on November 27, 2012 (the “**First Amendment**”) and on February 11, 2013 (the “**Second Amendment**”).

- WHEREAS,** The Parties have entered into the Merger Agreement; and
- WHEREAS,** The Parties desire to clarify the Private Placement and the dilutive effect of the Private Placement Securities; and
- WHEREAS,** The Parties desire to modify the definition of “Company Financial Statements and extend the date that the Company Financial Statements shall be provided to Parent; and
- WHEREAS,** The Parties desire to amend the Merger Agreement, as further set forth herein.

**NOW, THEREFORE,** in consideration of the mutual promises and covenants set forth herein, the Parties hereby agree as follows:

1. The definition of the term “Private Placement” as defined in the Merger Agreement, and as amended in the First Amendment, shall be amended by replacing the words “the offering of securities” with “one or more private offerings of securities that are exempt from registration with SEC” and adding the words “, which are consummated following the date of this Agreement” to the end of such definition.
2. The definition of the term “Private Placement Securities” as defined in the Merger Agreement shall be amended by replacing the words “of Parent” with the words “of Parent or Company”.
3. The definitions of “Lead Investment Bank” and “Private Placement Memorandum” shall be deleted.
4. The second sentence of Section 2.5(b) of the Merger Agreement shall be deleted and replaced with the following sentence:
 

“Without derogating from the above, it is clarified that upon consummation of the Merger, any Private Placement Securities issued following the date of this Agreement will dilute the Existing Company Shareholders and the stockholders of Parent on a pro rata basis.”

The third sentence of Section 2.5(b) of the Merger Agreement shall be deleted in its entirety.

The fourth sentence of Section 2.5(b) of the Merger Agreement shall be amended by replacing the words “\$9,000,000 (as increased after March 31, 2013 by an amount equal to one-half of the Adjustment)” with “\$10,000,000”.

In addition, the fifth sentence of Section 2.5(b) of the Merger Agreement shall be deleted in its entirety.
5. The last sentence of new Section 2.5(b)(A) referenced in Paragraph 1 of the Second Amendment shall be deleted and replaced with the following sentence:
 

“Any references in this Agreement to the term “Adjustment” shall mean the Additional Adjustment.”
6. Section 3.25(a) of the Merger Agreement, as amended in the Second Amendment, shall be deleted and the following is substituted in lieu thereof:
 

“(a) The Company has agreed to use its best efforts to deliver to Parent on or before April 15, 2013, copies of the audited balance sheets of the Company and the audited statements of operations, and audited changes in shareholders’ equity and cash flows, through December 31, 2012, required for the proxy statement or Registration Statement on Form S-4 (collectively, the “Company Financial Statements”). The Company Financial Statements (including the related notes) will be prepared in accordance with GAAP during the periods involved, and will present fairly the consolidated financial

position of the Company as of the respective dates set forth therein, and the consolidated results of the Company's operations and its cash flows for the respective periods set forth therein in accordance with GAAP."

7. The first sentence of Section 5.18(b) of the Merger Agreement, as amended in the Second Amendment, shall be amended by replacing the words "February 28, 2013" with "April 15, 2013".

8. Section 10.1(c)(iii) of the Merger Agreement, as amended in the Second Amendment, shall be deleted and replaced with the following:

"If the Company does not deliver to Parent the Company Financial Statements on or before April 15, 2013."

9. Section 10.1(d)(iii) of the Merger Agreement is amended by replacing the words "\$9,000,000 (as increased after March 31, 2013 by an amount equal to one-half of the Adjustment)" with "\$10,000,000".

10. The first sentence of Section 5.19 of the Merger Agreement shall be deleted and replaced with the following sentence:

"Promptly after execution of this Agreement, Parent and/or Company shall commence the Private Placement, each of which shall be subject to the Company's control."

In addition, the second sentence of Section 5.19 of the Merger Agreement shall be amended by replacing the words "Any funds raised" with "Any Private Placement Securities issued".

The first sentence in Section 5.22 of the Merger Agreement shall be deleted and the second sentence of

11. Section 5.22 of the Merger Agreement shall be amended by replacing the word "thereof" with "of the Private Placement".

12. Unless amended hereby, all provisions of the Merger Agreement, the First Amendment and the Second Amendment shall remain in full force and effect.

*[The remainder of this page intentionally left blank]*

**IN WITNESS WHEREOF**, the Parties hereto have executed this Third Amendment as of the Effective Date.

**EPICEPT CORPORATION**

By: \_\_\_\_\_

Name: Robert W. Cook

Title: President

**EPICEPT ISRAEL LTD.**

BY: EPICEPT CORPORATION

By: \_\_\_\_\_

Name: Robert W. Cook

Title: President

**IMMUNE PHARMACEUTICALS LTD.**

By: \_\_\_\_\_

Name: Dr. Daniel Gedeon Teper

Title: Chief Executive Officer

*Signature Page to*

*Third Amendment to Merger Agreement and Plan of Reorganization*