

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

FORM S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

**DISCOVERY LABORATORIES, INC.**

(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of incorporation or organization)

94-3171943  
(I.R.S. Employer Identification No.)

2600 Kelly Road, Suite 100, Warrington, Pennsylvania  
(Address of Principal Executive Offices)

18976-3622  
(Zip Code)

Discovery Laboratories, Inc. 401(k) Plan  
(Full title of the plan)

David L. Lopez, C.P.A., Esq.  
Executive Vice President, General Counsel  
Discovery Laboratories, Inc.  
2600 Kelly Road, Suite 100  
Warrington, Pennsylvania 18976-3622  
(215) 488-9300  
(Name, address and telephone number of agent for service)

Copies to:

Ira L. Kotel, Esq.  
Dickstein Shapiro LLP  
1177 Avenue of the Americas, 47th Floor  
New York, New York 10036-2714  
(212) 277-6500

**CALCULATION OF REGISTRATION FEE**

Title of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price Per Share(2)	Proposed Maximum Aggregate Offering Price(2)	Amount of Registration Fee
Common Stock, \$0.001 par value	400,000	\$1.985	\$794,000	\$84.96

(1) Pursuant to Rule 416 promulgated under the Securities Act of 1933, as amended, the registration statement shall be deemed to cover any additional shares of common stock, par value \$0.001 per share, that become issuable under the 401(k) Plan by reason of any stock splits, stock dividends or similar transactions.

(2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) promulgated under the Securities Act of 1933, as amended, by taking the average of the high and low sales price per share of the common stock on The Nasdaq Global Market on September 14, 2006.

## REGISTRATION OF ADDITIONAL SECURITIES

This registration statement is being filed pursuant to General Instruction E of Form S-8 under the Securities Act of 1933, as amended, to register an additional 400,000 shares of our common stock, par value \$0.001 per share, that may be issued pursuant to the 401(k) Plan (the "Plan") of Discovery Laboratories, Inc. (the "Company"). The Company previously registered shares of its common stock for issuance under the Plan on a registration statement on Form S-8 filed with the Securities and Exchange Commission (the "Commission") on November 12, 2003 (File No. 333-110412). Pursuant to General Instruction E to Form S-8, the contents of such registration statement, including all exhibits thereto as applicable, are incorporated herein by reference.

All documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended, prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all such securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be part hereof from the date of filing of such documents. Any statement contained herein or in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this registration statement to the extent that a statement contained herein or in any other subsequently filed document which also is incorporated or deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this registration statement.

### PART II

#### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

##### Item 8. Exhibits.

<u>Exhibit No.</u>	<u>Description</u>	<u>Method of Filing</u>
5.1	Opinion of Dickstein Shapiro LLP, legal counsel.	Filed herewith.
23.1	Consent of Dickstein Shapiro LLP (included in its opinion filed as Exhibit 5.1 to this registration statement).	Filed herewith.
23.2	Consent of Ernst & Young LLP, independent registered public accounting firm.	Filed herewith.
24.1	Powers of Attorney (included in signature page to this registration statement).	Filed herewith.

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Warrington, Commonwealth of Pennsylvania on this 28th day of September, 2006.

**DISCOVERY LABORATORIES, INC.**  
(Registrant)

By: /s/ Robert J. Capetola, Ph.D.

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Robert J. Capetola, Ph.D.  
President and Chief Executive Officer

## POWER OF ATTORNEY

We, the undersigned officers and directors of Discovery Laboratories, Inc., and each of us, do hereby constitute and appoint each of Robert J. Capetola, Ph.D., and David L. Lopez, CPA., Esq., or any of them, each acting alone, his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, to do any and all acts and things in our name, place and stead, in any and all capacities, in connection with this registration statement on Form S-8 under the Securities Act of 1933, as amended, or any registration statement for the same offering that is to be effective upon filing under the Securities Act of 1933, as amended, including, without limitation, to sign for us or any of us in our names in the capacities indicated below any and all amendments or supplements to this registration statement, including any and all stickers and post-effective amendments to the registration statement, and to sign any and all additional registration statements relating to the same offering of securities as this registration statement that are filed pursuant to Rule 462(b) under the Securities Act of 1933, as amended, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission and any applicable securities exchange or securities self-regulatory body, granting unto said attorneys-in-fact and agents, each acting alone, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or their substitutes or substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities indicated on the dates indicated.

<u>Signature</u>	<u>Name &amp; Title</u>	<u>Date</u>
<u>/s/ Robert J. Capetola</u>	Robert J. Capetola, Ph.D. President, Chief Executive Officer and Director	September 28, 2006
<u>/s/ John G. Cooper</u>	John G. Cooper Executive Vice President and Chief Financial Officer	September 28, 2006
<u>/s/Kathleen A. McGowan</u>	Kathleen A. McGowan Controller (Principal Accounting Officer)	September 28, 2006
<u>/s/ Herbert McDade</u>	Herbert McDade, Jr. Chairman of the Board of Directors	September 28, 2006
<u>/s/ W. Thomas Amick</u>	W. Thomas Amick Director	September 28, 2006
<u>/s/ Max Link</u>	Max Link, Ph.D. Director	September 28, 2006
<u>/s/ Antonio Esteve</u>	Antonio Esteve, Ph.D. Director	September 28, 2006
<u>/s/ Marvin E. Rosenthale</u>	Marvin E. Rosenthale, Ph.D. Director	September 28, 2006

## INDEX TO EXHIBITS

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September 28, 2006

Board of Directors  
Discovery Laboratories, Inc.  
2600 Kelly Road, Suite 100  
Warrington, Pennsylvania 18976-3622

Discovery Laboratories, Inc.--  
401(k) Plan

Ladies and Gentlemen:

We have acted as counsel for Discovery Laboratories, Inc., a Delaware corporation (the "Company"), in connection with the preparation of the Company's registration statement on Form S-8, and any amendments thereto (the "Registration Statement"), as filed with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"), for the registration under the Securities Act of up to 400,000 shares (the "Shares") of the Company's common stock, par value \$0.001 per share (the "Common Stock"), to be issued as matching contributions by the Company to the accounts of such of the Company's employees that participate in the Company's 401(k) Plan (the "Plan"). You have requested that we furnish our opinion as to matters hereinafter set forth.

In connection with this opinion, we have examined originals or copies, certified or otherwise identified to our satisfaction, of (i) the Company's Restated Certificate of Incorporation, as amended; (ii) the Company's Amended and Restated By-Laws; and (iii) resolutions adopted by the Company's Board of Directors on September 18, 2006. We have also examined originals or copies, certified or otherwise identified to our satisfaction, of such records of the Company and such agreements, certificates of public officials, certificates of officers or other representatives of the Company, and such other documents, certificates and records as we have deemed necessary or appropriate as a basis for the opinions set forth herein. As to various questions of fact material to this opinion, we have also relied upon representations and warranties of the Company and upon such certificates and other instruments of officers of the Company and public officials furnished to us by the Company, in each case without independent investigation or verification of their accuracy.

In our examination, we have assumed (i) the genuineness of all signatures; (ii) the authenticity of all documents submitted to us as originals; (iii) the conformity to original documents of all documents submitted to us as certified, conformed or photostatic, electronic or facsimile copies and the authenticity of the originals of such documents; (iv) the authority of all persons signing any document; (v) the enforceability of all the documents and agreements we have reviewed in accordance with their respective terms against the parties thereto; and (vi) the truth and accuracy of all matters of fact set forth in all certificates and other instruments furnished to us.

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Based upon the foregoing, and subject to the assumptions, qualifications and limitations set forth herein, we are of the opinion that the Shares offered by the Company pursuant to the Registration Statement, when issued and paid for in accordance with the Plan, will be validly issued, fully paid and non-assessable.

No opinion is expressed herein with respect to any laws other than the General Corporation Law of the State of Delaware. No opinion is expressed as to the effect that the law of any other jurisdiction may have upon the subject matter of the opinion expressed herein under conflicts of law principles, rules and regulations or otherwise.

This opinion is expressed as of the date hereof. We assume no obligation to supplement this letter if any applicable laws change after the date hereof or if we become aware of any new facts that might effect any view expressed herein after the date hereof.

We hereby consent to the filing of this opinion as Exhibit 5.1 to the Registration Statement. In giving this consent, we do not hereby admit that we are within the category of persons whose consent is required by Section 7 of the Securities Act or the rules and regulations promulgated thereunder by the Commission.

The foregoing opinion is delivered to the Board of Directors of the Company in connection with the Registration Statement, and not for any other purpose.

We wish to call your attention to the fact that the fair market value of all securities of the Company that are beneficially owned by attorneys of this Firm exceeds \$50,000.

Very truly yours,

/s/ Dickstein Shapiro LLP

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## Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement (Form S-8 No. 333-xxxxx) pertaining to the Discovery Laboratories, Inc. 401(k) Plan of our reports dated January 27, 2006, with respect to the consolidated financial statements of Discovery Laboratories, Inc. included in its Annual Report (Form 10-K) for the year ended December 31, 2005, Discovery Laboratories, Inc. management's assessment of the effectiveness of internal control over financial reporting, and the effectiveness of internal control over financial reporting of Discovery Laboratories, Inc. filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

Philadelphia, Pennsylvania  
September 26, 2006

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