

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

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**FORM 8-K**

**CURRENT REPORT**

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

**December 27, 2010**

Date of Report (Date of earliest event reported)

**Discovery Laboratories, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction  
of incorporation)

**000-26422**

(Commission File Number)

**94-3171943**

(IRS Employer  
Identification Number)

**2600 Kelly Road, Suite 100**

**Warrington, Pennsylvania 18976**

(Address of principal executive offices)

**(215) 488-9300**

(Registrant's telephone number, including area code)

(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 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.**

Discovery Laboratories, Inc. (the “Company”) today announced that it has filed a Certificate of Amendment to its Amended and Restated Certificate of Incorporation (the “Amendment”) to (i) effect a 1-for-15 share consolidation, or reverse stock split (“reverse split”), effective at 12:01 a.m. on December 28, 2010 (the “Effective Time”), and (ii) reduce the number of authorized shares of common stock, par value \$0.001 per share (the “Common Stock”), under the Company’s Certificate of Incorporation from 380 million to 50 million. Because the Amendment does not reduce the number of authorized shares of Common Stock in the same proportion as the reverse split, the effect of the Amendment is to increase the number of shares of Common Stock available for issuance relative to the number of shares issued and outstanding.

As previously disclosed, the stockholders of the Company approved proposals authorizing the Board of Directors, in its discretion, to implement the reverse split and reduce the number of authorized shares of Common Stock at the Annual Meeting of Stockholders held on December 21, 2010. For further information about the proposals to authorize the Board of Directors to implement the reverse split and reduce the number of authorized shares of Common Stock, please refer to the Company’s definitive proxy statement as filed with the SEC on November 15, 2010.

At the Effective Time, immediately and without further action by the Company’s stockholders, every 15 shares of the Company’s Common Stock issued and outstanding immediately prior to the Effective Time will automatically be converted into one share of Common Stock. In lieu of fractional shares, stockholders will receive cash in an amount equal to the product obtained by multiplying (i) the closing sale price per share on the business day immediately preceding the Effective Time as reported on The Nasdaq Capital Market® by (ii) the number of shares of Common Stock held by the stockholder that would otherwise have been exchanged for the fractional share interest. Further, any options, warrants and rights outstanding as of the Effective Time that are subject to adjustment will be adjusted in accordance with the terms thereof. These adjustments may include, without limitation, changes to the number of shares of common stock that may be obtained upon exercise or conversion of these securities, and changes to the applicable exercise or purchase price.

The Certificate of Amendment to the Amended and Restated Certificate of Incorporation of the Company is filed as Exhibit 3(i) hereto and is incorporated by reference herein. The press release announcing the Amendment is filed as Exhibit 99.1 hereto and is incorporated by reference herein.

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

(d) Exhibits

- 3.1 Certificate of Amendment to the Amended and Restated Certificate of Incorporation of Discovery Laboratories, Inc., effective 12:01 a.m. on December 28, 2010.
  - 99.1 Press release dated December 27, 2010.
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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.

**Discovery Laboratories, Inc.**

By: /s/ W. Thomas Amick  
Name: W. Thomas Amick  
Title: Chairman of the Board and  
Chief Executive Officer

Date: December 27, 2010

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**CERTIFICATE OF AMENDMENT TO  
THE AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF  
DISCOVERY LABORATORIES, INC.**

(Pursuant to Section 242 of the General Corporation Law of the State of Delaware)

Discovery Laboratories, Inc. a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "General Corporation Law"),

**DOES HEREBY CERTIFY:**

1. That the name of this corporation is Discovery Laboratories, Inc. (the "Corporation"), and that the Corporation was originally incorporated pursuant to the General Corporation Law on November 6, 1992 under the name Ansan, Inc.
2. That at a meeting of the Board of Directors of the Corporation, resolutions were duly adopted setting forth proposed amendments to the Amended and Restated Certificate of Incorporation of the Corporation, declaring said amendments to be advisable and calling a meeting of the stockholders of the Corporation for consideration thereof.
3. That such amendments were duly adopted in accordance with the provisions of Section 242 of the General Corporation Law by the Board of Directors and stockholders of the Corporation, and that such amendments are set forth in this Certificate of Amendment.
4. That upon the effectiveness of this Certificate of Amendment as set forth in paragraph 5 below, Article FOURTH of the Amended and Restated Certificate of Incorporation is amended and restated to read as follows:

The total number of shares of all classes of stock which the Corporation shall have the authority to issue is 55,000,000 consisting of 50,000,000 shares of common stock, par value \$0.001 per share (the "Common Stock"), and 5,000,000 shares of preferred stock, par value \$0.001 per share (the "Preferred Stock").

On December 28, 2010, at 12:01 a.m. Eastern Time (the "Effective Time"), each fifteen (15) shares of the Common Stock, par value \$0.001 per share (the "Common Stock"), issued and outstanding immediately prior to the Effective Time shall automatically be combined into one (1) validly issued, fully paid and non-assessable share of Common Stock without any further action by the Corporation or the holder thereof, subject to the treatment of fractional share interests as described below (the "Reverse Stock Split"). No fractional shares will be issued as a result of the Reverse Stock Split. Instead, stockholders who otherwise would be entitled to receive a fractional share of Common Stock as a consequence of the Reverse Stock Split will be entitled to receive cash in an amount equal to the product obtained by multiplying (i) the closing sale price of our Common Stock on the business day immediately preceding the effective date of the Reverse Stock Split as reported on the The Nasdaq Capital Market® by (ii) the number of shares of our Common Stock held by the stockholder that would otherwise have been exchanged for the fractional share interest. Each certificate that immediately prior to the Effective Time represented shares of Common Stock ("Old Certificates"), shall thereafter represent that number of shares of Common Stock into which the shares of Common Stock represented by the Old Certificate shall have been combined, subject to the elimination of fractional share interests as described above.

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5. This Certificate of Amendment shall become effective on December 28, 2010 at 12:01 a.m. Eastern Time.

6. Except as set forth in this Certificate of Amendment, the Amended and Restated Certificate of Incorporation, as previously amended, remains in full force and effect.

IN WITNESS WHEREOF, this Certificate of Amendment has been executed by a duly authorized officer of the Corporation on this 27<sup>th</sup> day of December 2010.

By: /s/ W. Thomas Amick  
Name: W. Thomas Amick  
Title: Chairman of the Board and  
Chief Executive Officer

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## Discovery Labs Announces Reverse Stock Split

**Warrington, PA, December 27, 2010** — **Discovery Laboratories, Inc. (Nasdaq: DSCO)** today announced that it has filed a Certificate of Amendment to its Amended and Restated Certificate of Incorporation (the "Amendment") to effect a 1-for-15 share consolidation, or reverse stock split ("reverse split"), effective at 12:01 a.m. on December 28, 2010 (the "Effective Time"). In addition, the Amendment reduces the number of shares of common stock, par value \$0.001 per share, authorized under the Certificate of Incorporation from 380 million to 50 million. Because the Amendment does not reduce the number of authorized shares of common stock in the same proportion as the reverse split, the effect of the Amendment is to increase the number of shares of common stock available for issuance relative to the number of shares issued and outstanding. The stockholders of Discovery Labs approved proposals authorizing the Board of Directors, in its discretion, to implement the reverse split and reduce the number of authorized shares of common stock at the Annual Meeting of Stockholders held on December 21, 2010.

The Board of Directors of Discovery Labs has determined to implement the reverse split at this time to enable the market price per-share of its common stock to close above \$1.00, which is a continued listing requirement of The NASDAQ Capital Market® ("Nasdaq"). On November 30, 2010, Discovery Labs received a Staff Determination letter from Nasdaq indicating that it had not established compliance with Nasdaq Listing Rule 5550(a)(2) ("Minimum Bid Price Rule") because its common stock had not closed above \$1.00 per share over a period of 10 consecutive business days ending on or prior to November 29, 2010, and that its stock is subject to delisting. Discovery Labs has requested a hearing with Nasdaq to review the Staff Determination and believes that implementation of the reverse split will support its continued listing on Nasdaq. Discovery Labs believes that continued listing on Nasdaq, combined with the increase in shares available for issuance, will enhance its ability to secure necessary capital from potential strategic partners and prospective investors to achieve its key business objectives, including potentially gaining U.S. Food and Drug Administration (FDA) approval for its lead product, Surfaxin®, for the prevention of respiratory distress syndrome (RDS) in premature infants.

### Details of the Reverse Split

At the Effective Time, immediately and without further action by Discovery Labs' stockholders, every 15 shares of Discovery Labs' pre-split common stock, par value \$0.001 per share, will automatically be converted into one share of post-split common stock, par value \$0.001 per share. In lieu of fractional shares, stockholders will receive cash in an amount equal to the product obtained by multiplying (i) the closing sale price per share on the business day immediately preceding the Effective Time as reported on Nasdaq by (ii) the number of shares of common stock held by the stockholder that would otherwise have been exchanged for the fractional share interest.

The immediate effect of the reverse split will be to reduce the number of shares of Discovery Labs' common stock that are issued and outstanding to approximately 13.8 million shares (excluding shares reserved for stock options and unexercised warrants), adjusted for fractional interests. The reverse split will affect all stockholders uniformly and will have no effect on the proportionate holdings of any individual stockholder, with the exception of adjustments related to fractional shares. There will be no change in the number of stockholders of record as a result of the reverse split. Following the reverse split, all shares will remain fully paid and non-assessable.

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To inform the market of the reverse split, Discovery Labs expects that Nasdaq will append a suffix character, "D," to the Company's trading symbol (DSCO) for approximately 20 days after the Effective Time. After the ~20 trading-day period, the ticker symbol will revert to "DSCO". In addition, Discovery Labs' common stock will also trade under a new CUSIP number beginning on December 28, 2010.

Additional information can be found in Discovery Labs' definitive proxy statement, which was filed with the SEC on November 15, 2010 and is available on the Company's website at [www.Discoverylabs.com](http://www.Discoverylabs.com).

#### **About Discovery Labs**

Discovery Laboratories, Inc. is a biotechnology company developing surfactant therapies for respiratory diseases. Surfactants are produced naturally in the lungs and are essential for breathing. Discovery Labs' novel proprietary KL4 surfactant technology produces a synthetic, peptide-containing surfactant that is structurally similar to pulmonary surfactant and is being developed in liquid, aerosol or lyophilized formulations. In addition, Discovery Labs' proprietary capillary aerosolization technology produces a dense aerosol, with a defined particle size that is capable of potentially delivering aerosolized KL4 surfactant to the lung without the complications currently associated with liquid surfactant administration. Discovery Labs believes that its proprietary technology platform makes it possible, for the first time, to develop a significant pipeline of surfactant products to address a variety of respiratory diseases for which there frequently are few or no approved therapies. For more information, please visit our website at [www.Discoverylabs.com](http://www.Discoverylabs.com).

#### **Forward-Looking Statements**

*To the extent that statements in this press release are not strictly historical, all such statements are forward-looking, and are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. These forward-looking statements, including with respect to the potential continued listing of the Company's common stock on the Nasdaq Capital Market, the potential approval in the United States of Surfaxin for the prevention of RDS in premature infants, and the ability of the Company to fund its activities through strategic and financing transactions or otherwise, are subject to certain risks and uncertainties that could cause actual results to differ materially from the statements made. Examples of such risks and uncertainties are described in the Company's filings with the Securities and Exchange Commission including the Company's proxy statement on Schedule 14A and the most recent reports on Forms 10-K, 10-Q and 8-K, and any amendments thereto.*

#### **Contact Information:**

Investor relations:

John G. Cooper, President and Chief Financial Officer  
215-488-9490

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