

RITA MEDICAL SYSTEMS INC
Form S-8
October 06, 2006

As filed with the Securities and Exchange Commission on October 6, 2006
Registration No. 333-

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

**FORM S-8
REGISTRATION STATEMENT UNDER
THE SECURITIES ACT OF 1933**

RITA Medical Systems, Inc.

(Exact Name of Registrant as Specified in Its Charter)

Delaware 94-3199149
(State or Other (I.R.S. Employer
Jurisdiction of Identification No.)
Incorporation or
Organization)

46421 Landing Parkway
Fremont, CA 95438
(Address of Principal Executive Offices)

2005 Stock and Incentive Plan
(Full Title of the Plan)

Joseph DeVivo
President and Chief Executive Officer
46421 Landing Parkway
Fremont, CA 95438
(Name and Address of Agent For Service)

(510) 771-0400
(Telephone Number, Including Area
Code, of Agent For Service)

Copy to:
Mark B. Weeks
Heller Ehrman LLP
275 Middlefield Road
Menlo Park, California 94025
Telephone: (650) 324-7000
Facsimile: (650) 324-0638

CALCULATION OF REGISTRATION FEE

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Title of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price per Share(2)	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, par value \$0.001 per share	500,000	\$ 3.12	\$ 1,560,000	\$ 166.92

(1) Pursuant to Rule 416(a), this registration statement also covers any additional securities that may be offered or issued in connection with any stock split, stock dividend or similar transaction.

(2) Estimated solely for the purpose of computing the amount of registration fee pursuant to Rule 457(c) under the Securities Act of 1933, as amended, based on the average of the high and low prices of the Registrant's Common Stock reported on the Nasdaq National Market on October 2, 2006.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

The following documents, which have been filed by RITA Medical Systems, Inc. (the “Registrant”) with the Securities and Exchange Commission (the “Commission”), are hereby incorporated by reference in this Registration Statement:

- (a) Registrant’s Annual Report on Form 10-K for the year ended December 31, 2005, filed pursuant to Sections 13(a) or 15(d) of the Securities Exchange Act of 1934 (the “Exchange Act”) on March 15, 2006, which contains audited financial statements for the Registrant’s latest fiscal year ended December 31, 2005;
- (b) Registrant’s Quarterly Report on Form 10-Q for the period ended March 31, 2006, filed on May 10, 2006;
- (c) Registrant’s Quarterly Report on Form 10-Q for the period ended June 30, 2006, filed on August 8, 2006;
- (d) Registrant’s Current Reports on Form 8-K filed on February 6, 2006, March 14, 2006, May 2, 2006 and June 8, 2006; and
- (e) The description of Registrant’s Common Stock contained in the Registration Statement on Form 8-A filed pursuant to Section 12 of the Exchange Act, and any amendment or report filed with the SEC for the purpose of updating such description.

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, prior to the filing of a post-effective amendment to this registration statement which indicates that all securities offered hereby have been sold or which deregisters all securities remaining unsold, shall be deemed to be incorporated by reference in this registration statement and to be a part hereof from the date of filing of such documents.

Item 4. Description of Securities

Not applicable.

Item 5. Interests of Named Experts and Counsel

Not applicable.

Item 6. Indemnification of Directors and Officers

The Registrant’s Amended and Restated Certificate of Incorporation reduces the liability of a director to the corporation or its stockholders for monetary damages for breaches of his or her fiduciary duty of care to the fullest extent permissible under Delaware law. The Registrant’s further provide for indemnification of corporate agents to the maximum extent permitted by the Delaware General Corporation Law. In addition, the Registrant has entered into indemnification agreements with its officers and directors.

Item 7. Exemption from Registration Claimed

Not applicable.

II-1

Item 8. Exhibits

Item No.	Description of Item
<u>5.1</u>	Opinion of Heller Ehrman LLP
<u>23.1</u>	Consent of Stonefield Josephson, Inc., Independent Registered Public Accounting Firm
<u>23.2</u>	Consent of PricewaterhouseCoopers LLP, Independent Registered Public Accounting Firm
<u>23.3</u>	Consent of Heller Ehrman LLP (filed as part of Exhibit 5.1)
<u>24.1</u>	Power of Attorney (See page II-4)
<u>99.1</u>	RITA Medical Systems, Inc. 2005 Stock and Incentive Plan

Item 9. Undertakings

A. The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement;

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement; provided, however, that paragraphs A(1)(i) and A(1)(ii) do not apply if the registration statement is on Form S-3, Form S-8 or Form F-3, and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the registrant pursuant to Section 13 or 15(d) of the Exchange Act that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

B. The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

C. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the

II-2

Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

II-3

SIGNATURES

Pursuant to the requirements of the Securities Act, 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 Fremont, State of California, on this 6th day of October, 2006.

RITA MEDICAL SYSTEMS, INC.

By: /s/ Michael Angel

Michael Angel
Chief Financial Officer

POWER OF ATTORNEY TO SIGN AMENDMENT

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Joseph DeVivo and Michael Angel, his attorneys-in-fact and agents, each acting alone, with the power of substitution and resubstitution, for him or her and in his or her name, place or stead, in any and all capacities, to sign any amendments to this Registration Statement on Form S-8, and to file such amendments, together with exhibits and other documents in connection therewith, with the Securities and Exchange Commission, granting to the attorney-in-fact and agent, 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 as he might or could do in person, and ratifying and confirming all that the attorney-in-fact and agent, or his or her substitute or substitutes, may do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement on Form S-8 has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/Joseph DeVivo Joseph DeVivo	President, Chief Executive Officer and Director	October 6, 2006
/s/Michael Angel Michael Angel	Chief Financial Officer (Principal Financial and Accounting Officer)	October 6, 2006
/s/Vincent Bucci Vincent Bucci	Chairman of the Board of Directors	October 6, 2006
/s/James E. Brands James E. Brands	Director	October 6, 2006
/s/Thomas J. Dugan Thomas J. Dugan	Director	October 6, 2006

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/s/Scott Halsted Scott Halsted	Director	October 6, 2006
/s/Wesley E. Johnson, Jr. Wesley E. Johnson, Jr.	Director	October 6, 2006
/s/Randy Lindholm Randy Lindholm	Director	October 6, 2006
/s/Steve LaPorte Steve LaPorte	Director	October 6, 2006

II-4

Index to Exhibits

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