

BIOLASE TECHNOLOGY INC

Form S-8

June 27, 2007

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As filed with the Securities and Exchange Commission on June 27, 2007

Registration No. 333-\_\_\_\_\_

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

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

**BIOLASE TECHNOLOGY, INC.**

(Exact Name of Registrant as Specified in Its Charter)

**Delaware**  
(State or Other Jurisdiction of  
Incorporation or Organization)

**87-0442441**  
(I.R.S. Employer  
Identification Number)

**4 Cromwell  
Irvine, California 92618**  
(Address of Principal Executive Offices including Zip Code)

**BIOLASE TECHNOLOGY, INC. 2002 STOCK INCENTIVE PLAN**  
(Full Title of the Plan)

**Jeffrey W. Jones  
President and Chief Executive Officer  
4 Cromwell  
Irvine, California 92618  
(949) 336-1200**

**Copy to:  
William J. Cernius Esq.  
Latham & Watkins LLP  
650 Town Center Drive, Twentieth Floor  
Costa Mesa, California 92626  
(714) 540-1235**

(Name, Address, Including Zip Code, and Telephone Number,  
Including Area Code, of Agent for Service)

**CALCULATION OF REGISTRATION FEE**

| <b>Title of Securities to<br/>be Registered (3)</b> | <b>Amount<br/>to be<br/>Registered(1)</b> | <b>Proposed<br/>Maximum<br/>Offering<br/>Price<br/>Per<br/>Share(2)</b> | <b>Proposed<br/>Maximum<br/>Aggregate<br/>Offering<br/>Price(2)</b> | <b>Amount of<br/>Registration<br/>Fee</b> |
|---|---|---|---|---|
| Common Stock, par value \$0.001 per share           | 1,000,000                                 | \$ 6.08   | \$ 6,080,000  | \$ 186.66                                 |

- (1) The Biolase Technology Inc. 2002 Incentive Award Plan, as amended (the Incentive Award Plan ) authorizes the issuance of 5,950,000 shares of the Registrant s Common Stock, par value \$0.001 (the Common Stock ), of which 1,000,000 shares are being registered hereunder and 4,950,000 have been previously registered. In accordance with Rule 416(a) of the Securities Act of 1933, as amended, this registration statement shall also cover any additional shares of common stock which become issuable under the Stock Incentive Plan by reason of any stock dividend, stock split, recapitalization or similar transaction.
- (2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(h) and (c) under the Securities Act of 1933, as amended. The price per share and aggregate offering price for the shares of our Common Stock set forth in this Registration Statement are calculated on the basis of the average of the high and low trading prices of our Common Stock, as reported on the Nasdaq National Market on June 26, 2007.

**Proposed issuances to commence as soon after the effective date of the Registration Statement as practicable.**

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**PART I  
INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS**

The information called for in Part I of the Form S-8 is not being filed with or included in this Form S-8 (by incorporation by reference or otherwise) in accordance with the rules and regulations of the Securities and Exchange Commission (the Commission).

**PART II  
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Registration of Additional Securities**

The Incentive Award Plan authorizes the issuance of an aggregate of 5,950,000 shares of Common Stock, after giving effect to stock dividends. Biolase Technology, Inc. (the Company) has previously registered 3,000,000 shares issuable under the Incentive Award Plan by a Registration Statement on Form S-8 filed with the Commission on January 23, 2004, Registration No. 333-112173, and an additional 1,950,000 shares issuable under the Incentive Award Plan by a Registration Statement on Form S-8 filed with the Commission on December 23, 2005, Registration No. 333-130677 (collectively, the Prior Registration Statements). Under this Registration Statement, the Company is registering an additional 1,000,000 shares of Common Stock issuable under the Incentive Award Plan. The contents of the Prior Registration Statements are incorporated by reference herein to the extent not modified or superseded thereby or by any subsequently filed document that is incorporated by reference herein or therein.

**Experts**

The 2006 and 2005 financial statements and the 2006 management's report on the effectiveness of internal control over financial reporting incorporated in this registration statement by reference from the Company's Annual Report on Form 10-K have been audited by BDO Seidman LLP, an independent registered public accounting firm, as stated in their reports, which are incorporated herein by reference, and have been so incorporated in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

The financial statements and financial statement schedule for the year ended December 31, 2004 incorporated in this registration statement by reference to the Annual Report on Form 10-K for the year ended December 31, 2006 have been so incorporated in reliance on the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

**Item 8. Exhibits.**

See Index to Exhibits on page 3.

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**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the Registrant, Biolase Technology, Inc., a Delaware corporation, 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 Irvine, State of California, on this 27th day of June , 2007.

BIOLASE TECHNOLOGY, INC.

By: /s/ Richard L. Harrison  
Richard L. Harrison  
Executive Vice President, Chief  
Financial  
Officer and Secretary

**POWER OF ATTORNEY**

Each person whose signature appears below hereby authorizes and appoints Jeffrey W. Jones and Richard L. Harrison, or either of them, as attorneys-in-fact and agents with full power of substitution and resubstitution, to sign on his or her behalf, individually and in the capacities stated below, and to file any and all amendments, including post-effective amendments, to this Registration Statement and other documents in connection therewith, with the Commission, granting to said attorneys-in-fact and agents full power and authority to perform any other act on behalf of the undersigned required to be done in the premises.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities as of June 27, 2007.

**SIGNATURE**

**TITLE**

/s/ Jeffrey W. Jones

Vice Chairman of the Board, President and Chief Executive Officer (Principal Executive Officer)

Jeffrey W. Jones

/s/ Richard L. Harrison

Executive Vice President, Chief Financial Officer and Secretary (Principal Financial and Accounting Officer)

Richard L. Harrison

/s/ George V. d Arbeloff

Chairman of the Board

George V. d Arbeloff

/s/ Robert M. Anderton

Director

Robert M. Anderton

/s/ Daniel S. Durrie

Director

Daniel S. Durrie

/s/ Neil J. Laird

Director

Neil J. Laird

/s/ James R. Largent

Director

James R. Largent

/s/ Federico Pignatelli

Director and Chairman Emeritus

Federico Pignatelli

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**EXHIBIT**

|       |  |
|-------|--|
| 5.1+  | Opinion of Latham & Watkins LLP regarding the legality of the securities being registered  |
| 23.1+ | Consent of Latham & Watkins LLP (included in Exhibit 5.1)  |
| 23.2+ | Consent of BDO Seidman, LLP  |
| 23.3+ | Consent of PricewaterhouseCoopers LLP  |
| 24+   | Power of Attorney (included in the signature page to this Registration Statement).   |
| 99.1  | The Biolase Technology, Inc. 2002 Stock Incentive Plan (as amended by the Board of Directors through February 28, 2007 and approved by the Stockholders on May 16, 2007) (incorporated by reference to Appendix A of the Definitive Proxy Statement on Schedule 14A filed on April 10, 2007) |

+ Filed herewith