

ENDOLOGIX INC /DE/  
Form S-8  
August 07, 2006

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As Filed With the Securities and Exchange Commission on August 7, 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**

**ENDOLOGIX, INC.**  
(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**68-0328265**  
(I.R.S. Employer  
Identification No.)

**11 Studebaker, Irvine, California 92618**  
**(949) 595-7200**

(Address, including zip code, and telephone number, including area code of registrant's principal executive offices)

**2006 STOCK INCENTIVE PLAN**  
**2006 EMPLOYEE STOCK PURCHASE PLAN**  
(Full title of the plan)

**Paul McCormick**  
**President and Chief Executive Officer**  
**Endologix, Inc.**  
**11 Studebaker, Irvine, California 92618**  
**(949) 595-7200**

(Name, address, including zip code, and telephone number, including area code of agent for service)

*Copies to:*  
**Lawrence B. Cohn**  
**Michael A. Hedge**  
**Stradling Yocca Carlson & Rauth,**  
**660 Newport Center Drive, Suite 1600**  
**Newport Beach, California 92660**  
**(949) 725-4000**

**CALCULATION OF REGISTRATION FEE**

<b>Title of securities to be</b>	<b>Amount to be</b>	<b>Proposed maximum offering</b>	<b>Proposed maximum aggregate offering</b>	<b>Amount of registration</b>
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<b>registered</b>	<b>registered(1)</b>	<b>price per share (2)</b>	<b>price</b>	<b>fee</b>
Common Stock, par value \$0.001 per share	3,123,212 shares	\$ 3.73	\$11,649,581	\$ 1,246.51

- (1) Includes an indeterminate number of additional shares of the registrant's common stock which may be necessary to adjust the number of shares issued pursuant to the 2006 Stock Incentive Plan and the 2006 Employee Stock Purchase Plan as the result of stock splits, stock dividends or similar adjustments to the registrant's outstanding common stock.
- (2) Estimated solely for the purpose of calculating the registration fee, in accordance with Rule 457(h)(1) under the Securities Act of 1933, as amended (the Securities Act ), on the basis of the price of securities of the same class, as determined in accordance with

Rule 457(c)  
under the  
Securities Act,  
using the  
average of the  
high and low  
prices reported  
by the Nasdaq  
National Market  
for our common  
stock on  
August 1, 2006,  
which was  
\$3.73 per share.

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

**Item 3. Incorporation of Documents by Reference.**

The documents listed below have been filed by Endologix, Inc. (referred to herein as the Company, we, us or our) with the United States Securities and Exchange Commission (the SEC) and are incorporated herein by reference:

(a) our Annual Report on Form 10-K for the fiscal year ended December 31, 2005, as filed with the SEC on March 16, 2006;

(b) our Quarterly Reports on Form 10-Q for the quarterly period ended March 31, 2006 and June 30, 2006, as filed with the SEC on May 10, 2006 and August 4, 2006, respectively;

(c) the description of our common stock contained in our Registration Statement on Form 8-A, as filed with the SEC on May 3, 1996, including any amendment or report filed for the purpose of updating such description; and

(d) all other reports filed by us pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act), since the end of the fiscal year covered by the Annual Report on Form 10-K referred to in (a) above.

All documents subsequently filed by us pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all of such securities then remaining unsold, shall be deemed to be incorporated herein by reference and to be a part hereof from the date of filing of such documents, except as to any portion of any future annual or quarterly report to stockholders or document that is not deemed filed under such provisions. For the purposes of this registration statement, any statement in a document incorporated by reference shall be deemed to be modified or superseded to the extent that a statement contained in this registration statement modifies or supersedes a statement in such document. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this registration statement. Unless specifically stated otherwise, none of the information that we disclose under Items 2.02 or 7.01 in our Current Reports on Form 8-K, nor any exhibits relating to such information, furnished to the SEC prior to, on or subsequent to the date of this registration statement will be deemed to be incorporated by reference into, or otherwise included in, this registration statement.

**Item 4. Description of Securities.**

Not applicable.

**Item 5. Interests of Named Experts and Counsel.**

Not applicable.

**Item 6. Indemnification of Directors and Officers.**

Section 145 of the Delaware General Corporation Law provides that a corporation may indemnify any person made a party to an action (other than an action by or in the right of the corporation) by reason of the fact that he or she was a director, officer, employee or agent of the corporation or was serving at the request of the corporation against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the corporation and, with respect to any criminal action (other than an action by or in the right of the corporation), has no reasonable cause to believe his or her conduct was unlawful.

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Our restated certificate of incorporation, as amended, limits, to the maximum extent permitted by Delaware law, the personal liability of directors for monetary damages for breach of their fiduciary duties as a director. Our amended and restated bylaws provide that we shall indemnify our officers and directors and may indemnify our employees and other agents to the fullest extent permitted by Delaware law.

Our directors and officers are covered by insurance policies indemnifying against certain liabilities, including certain liabilities arising under the Securities Act of 1933, which might be incurred by them in such capacities and against which they cannot be indemnified by us. We have entered into indemnification agreements with all of our executive officers and directors which provide indemnification under certain circumstances for acts and omissions in the course of their employment with us.

**Item 7. Exemption from Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

The following exhibits are filed as part of this registration statement:

<b>Exhibit Number</b>	<b>Description</b>
4.1	Amended and Restated Certificate of Incorporation.
4.2	Amended and Restated Bylaws (Incorporated by reference to Exhibit 3.2 to the Company's Annual Report on Form 10-K filed with the SEC on March 29, 2001).
4.3	Specimen Certificate of Common Stock (Incorporated by reference to Exhibit 4.1 to the Company's Amendment No. 2 to Registration Statement on Form S-1, No. 333-04560, filed with the SEC on June 10, 1996).
5.1	Opinion of Stradling Yocca Carlson & Rauth, a Professional Corporation.
23.1	Consent of Stradling Yocca Carlson & Rauth, a Professional Corporation (included in Exhibit 5.1).
23.2	Consent of Independent Registered Public Accounting Firm.
24.1	Power of Attorney (included on signature page to the Registration Statement).
99.1	2006 Stock Incentive Plan (incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K, filed with the SEC on May 26, 2006).
99.2	2006 Employee Stock Purchase Plan (incorporated by reference to Exhibit 10.2 of the Company's Current Report on Form 8-K, filed with the SEC on May 26, 2006).

**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 of 1933;

(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

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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) of this section do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, 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 of 1933, each filing of the registrant's annual report pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Securities Exchange Act of 1934), 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 of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act of 1933 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 of 1933 and will be governed by the final adjudication of such issue.



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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 Irvine, State of California, on the 7th day of August, 2006.

ENDOLOGIX, INC.

By: /s/ Paul McCormick  
Paul McCormick  
President and Chief Executive Officer

**POWER OF ATTORNEY**

We, the undersigned directors and officers of Endologix, Inc., do hereby constitute and appoint Paul McCormick and Robert J. Krist, or either of them, our true and lawful attorneys and agents, to do any and all acts and things in our name and behalf in our capacities as directors and officers and to execute any and all instruments for us and in our names in the capacities indicated below, which said attorneys and agents, or either of them, may deem necessary or advisable to enable said corporation to comply with the Securities Act of 1933, as amended, and any rules, regulations, and requirements of the Securities and Exchange Commission, in connection with this registration statement, including specifically, but without limitation, power and authority to sign for us or any of us in our names and in the capacities indicated below, any and all amendments (including post-effective amendments) to this registration statement, or any related registration statement that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act of 1933, as amended; and we do hereby ratify and confirm all that the said attorneys and agents, or either of them, shall 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 and on the date indicated.

Signature	Title	Date
/s/ Paul McCormick Paul McCormick	President, Chief Executive Officer and Director (Principal Executive Officer)	August 7, 2006
/s/ Robert J. Krist Robert J. Krist	Chief Financial Officer and Secretary (Principal Financial and Accounting Officer)	August 7, 2006
/s/ Franklin D. Brown Franklin D. Brown	Chairman of the Board	August 7, 2006
/s/ Ronald H. Coelyn Ronald H. Coelyn	Director	August 7, 2006
/s/ Roderick de Greef Roderick de Greef	Director	August 7, 2006

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/s/ Edward B. Deithrich, M.D.	Director	August 7, 2006
Edward B. Diethrich, M.D.		
/s/ Jeffrey F. O Donnell	Director	August 7, 2006
Jeffrey F. O Donnell		
/s/ Gregory D. Waller	Director	August 7, 2006
Gregory D. Waller		

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