

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

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

December 7, 2009

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.

(a) Amendment to Articles of Incorporation

On December 7, 2009, the stockholders of Discovery Laboratories, Inc. (the "Company") voted at the 2009 Annual Meeting of Stockholders in favor of the Board of Directors' proposal to amend the Company's Certificate of Incorporation to increase the number of authorized shares of common stock from 180 million shares to 380 million shares. An Amended and Restated Certificate of Incorporation effecting the foregoing amendment to the Certificate of Incorporation was filed with the Delaware Secretary of State's Corporation Department on December 9, 2009 and became effective immediately upon filing.

The full text of the Amended and Restated Certificate of Incorporation is attached to this Form 8-K as Exhibit 3.1 hereto and is incorporated herein by reference in its entirety.

Item 8.01. Other Events.

On December 7, 2009, the Company held its Annual Meeting of Stockholders. The following matters were voted on by the stockholders: (i) the election of five directors, (ii) ratification of the appointment of Ernst & Young LLP as the Company independent registered public accounting firm for the Company's fiscal year ending December 31, 2009; (iii) an amendment to the Company's Restated Certificate of Incorporation to increase the number of authorized shares of common stock available for issuance from 180 million to 380 million; (iv) an amendment to the Company's Restated Certificate of Incorporation to permit stockholder action to be taken only at a duly called annual or special meeting of stockholders and to eliminate stockholder action by written consent, and (v) an amendment to the Company's 2007 Long-Term Incentive Plan to increase the number of shares of Common Stock reserved for issuance under the Plan by 3.4 million shares, from 8,500,000 shares to 11,900,000 shares. The results of the stockholder votes are as follows:

(i) Election of Directors: each of the nominees for Director was elected by a plurality of the votes cast by stockholders as follows:

	<u>For</u>	<u>Withheld</u>
W. Thomas Amick	80,349,177	16,402,852
Antonio Esteve, Ph.D.	74,106,021	22,646,008
Max Link, Ph.D.	75,648,521	21,103,508
Herbert H. McDade, Jr.	73,171,152	23,580,877
Marvin E. Rosenthale, Ph.D.	74,883,990	21,868,039

(ii) Ratification of the appointment of Ernst & Young LLP as the Company's Independent Registered Public Accounting Firm: this proposal was approved by a majority of shares present at the meeting and was, therefore, adopted. The vote was as follows:

<u>For</u>	<u>Against</u>	<u>Abstain</u>
90,050,012	5,979,070	722,947

(iii) Amendment to the Company's Restated Certificate of Incorporation to increase the number of authorized shares of common stock available for issuance from 180 million to 380 million: this proposal was approved by a majority of the outstanding shares eligible to vote at the meeting and was, therefore, adopted. The vote was as follows:

<u>For</u>	<u>Against</u>	<u>Abstain</u>
63,748,463	32,559,244	444,322

(iv) Amendment to the Company's Restated Certificate of Incorporation to permit stockholder action to be taken only at a duly called annual or special meeting of stockholders and to eliminate stockholder action by written consent: This proposal was not approved by a majority of the outstanding shares eligible to vote and was, therefore, not adopted. The vote was as follows:

<u>For</u>	<u>Against</u>	<u>Abstain</u>
56,793,714	38,825,329	1,132,986

(v) Amendment to the Company's 2007 Long-Term Incentive Plan to increase the number of shares of Common Stock reserved for issuance under the Plan by 3.4 million shares, from 8,500,000 shares to 11,900,000 shares: this proposal was not approved by a majority of shares voting on the proposal at the meeting and was, therefore, not adopted. The vote was as follows:

<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Not Voted</u>
18,573,101	21,571,155	220,978	56,386,795

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

3.1 Amended and Restated Certificate of Incorporation effective December 9, 2009

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 interim
Chief Executive Officer

Date: December 9, 2009

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

DISCOVERY LABORATORIES, INC.

The Corporation was originally incorporated on November 6, 1992, under the name "Ansan, Inc."

FIRST: The name of the corporation (hereinafter called the "Corporation") is Discovery Laboratories, Inc.

SECOND: The address, including street, number, city, and county, of the registered office of the Corporation in the State of Delaware is 1209 Orange Street, City of Wilmington, County of New Castle; and the name of the registered agent of the Corporation in the State of Delaware at such address is The Corporation Trust Company.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

FOURTH: Authorization. The total number of shares of all classes of stock which the Corporation shall have authority to issue is 385,000,000 consisting of 380,000,000 shares of common stock, par value \$.001 per share (the "Common Stock"), and 5,000,000 shares of preferred stock, par value \$.001 per share (the "Preferred Stock").

The Board of Directors may divide the Preferred Stock into any number of series, fix the designation and number of shares of each such series, and determine or change the designation, relative rights, preferences, and limitations of any series of Preferred Stock. The Board of Directors (within the limits and restrictions of any resolutions adopted by it originally fixing the number of any shares of any series of Preferred Stock) may increase or decrease the number of shares initially fixed for any series, but no such decrease shall reduce the number below the number of shares then outstanding and shares duly reserved for issuance.

FIFTH: In furtherance and not in limitation of the powers conferred by statute, the Board of Directors shall have the power, both before and after receipt of any payment for any of the Corporation's capital stock, to adopt, amend, repeal or otherwise alter the Bylaws of the Corporation without any action on the part of the stockholders; provided, however, that the grant of such power to the Board of Directors shall not divest the stockholders of nor limit their power to adopt, amend, repeal, or otherwise alter the Bylaws.

SIXTH: Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

SEVENTH: The Corporation reserves the rights to adopt, repeal, rescind or amend in any respect any provisions contained in this Certificate of Incorporation in the manner now or hereafter prescribed by applicable law, and all rights conferred on stockholders herein are granted subject to this reservation.

EIGHTH: A director of the Corporation shall, to the fullest extent permitted by the General Corporation Law of the State of Delaware as it now exists or as it may hereafter be amended, not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. Neither any amendment nor repeal of this Article EIGHTH, nor the adoption of any provision of this Amended and Restated Certificate of Incorporation inconsistent with this Article EIGHTH, shall eliminate or reduce the effect of this Article EIGHTH in respect of any matter occurring or any cause of action, suit or claim that, but for this Article EIGHTH, would accrue or arise prior to such amendment, repeal or adoption of an inconsistent provision.

NINTH: This Amended and Restated Certificate of Incorporation was duly adopted in accordance with the provisions of Section 245 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, Discovery Laboratories, Inc., has caused this Amended and Restated Certificate of Incorporation to be signed by its duly authorized officer this 9th day of December 2009.

DISCOVERY LABORATORIES, INC.

By: /s/ W. Thomas Amick

Name: W. Thomas Amick

Title: Chairman of the Board and interim Chief Executive Officer
