

NightHawk Radiology Holdings Inc  
Form S-8  
September 16, 2008

As filed with the Securities and Exchange Commission on September 16, 2008

Registration No. 333-

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

**FORM S-8**  
**REGISTRATION STATEMENT**

*Under*

*The Securities Act of 1933*

**NIGHTHAWK RADIOLOGY HOLDINGS, INC.**

(Exact name of Registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

87-0722777  
(I.R.S. Employer  
Identification Number)

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601 Front Avenue, Suite 502

Coeur d Alene, Idaho 83814

(208) 676-8321

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

**NIGHTHAWK RADIOLOGY HOLDINGS, INC. 2006 EQUITY INCENTIVE PLAN**

(Full title of the plans)

**Paul E. Cartee, Esq.**

**Vice President and General Counsel**

**NightHawk Radiology Holdings, Inc.**

601 Front Avenue, Suite 502

Coeur d Alene, Idaho 83814

(208) 676-8321

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

*Copy to:*

**Patrick J. Schultheis, Esq.**

**Mark J. Handfelt, Esq.**

**Wilson Sonsini Goodrich & Rosati**

**Professional Corporation**

701 Fifth Avenue, Suite 5100

Seattle, Washington 98104

(206) 883-2500

**CALCULATION OF REGISTRATION FEE**

Title of Securities to be Registered	Maximum Amount to be Registered(1)	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock \$0.001 par value	295,782 shares (2)	\$9.19(3)	\$2,718,236.58	\$106.83
Common Stock Subject to Options, \$0.001 par value	613,588 shares (4)	\$8.88(5)	\$5,448,661.44	\$214.13
<b>TOTAL</b>	<b>909,370 shares</b>		<b>\$8,166,901.02</b>	<b>\$320.96</b>

- (1) Pursuant to Rule 416(a) of the Securities Act of 1933, this Registration Statement shall also cover any additional shares of the Registrant's common stock that become issuable under the 2006 Equity Incentive Plan by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without receipt of consideration that increases the number of the Registrant's outstanding shares of common stock.
- (2) For the sole purpose of calculating the registration fee, the number of shares to be registered under this Registration Statement has been broken down into two subtotals. This subtotal represents the portion of the additional shares available for issuance under the 2006 Equity Incentive Plan as of the date of this Registration Statement.
- (3) The Proposed Maximum Offering Price for these shares has been estimated solely for the purpose of calculating the registration fee based in accordance with Rule 457(h) of the Securities Act of 1933, as amended, upon the price of \$9.19 per share, the average of the high and low prices of the Common Stock of the Company on September 9, 2008 on the Nasdaq Global Market.
- (4) This subtotal represents the registration of the portion of the additional shares issuable upon exercise of outstanding equity awards granted under the 2006 Equity Plan as of the date of this Registration Statement.
- (5) The Proposed Maximum Offering Price for the shares subject to options that are currently outstanding as of the date of this Registration Statement are computed in accordance with Rule 457(h) based on the weighted average exercise price (rounded to the nearest cent) of the outstanding equity awards. Offering prices are estimated solely for the purpose of calculating the registration fee.

**NIGHTHAWK RADIOLOGY HOLDINGS, INC.**

**REGISTRATION OF ADDITIONAL SECURITIES**

**PURSUANT TO GENERAL INSTRUCTION E**

This Registration Statement registers additional shares of the registrant's common stock to be issued pursuant to the registrant's 2006 Equity Incentive Plan. Accordingly, the contents of the previous Registration Statements on Form S-8 (File No. 333-133527) filed by us with the Securities and Exchange Commission (SEC) on April 25, 2006 and September 27, 2007 (the Previous Forms S-8), including periodic reports that we filed after the Previous Forms S-8 to maintain current information about us, are incorporated by reference into this Registration Statement pursuant to General Instruction E of Form S-8.

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

The following documents previously filed with the SEC are hereby incorporated by reference:

- (a) Our Annual Report on Form 10-K for the fiscal year ended December 31, 2007 filed with the SEC on February 19, 2008.
- (b) All other reports filed with the SEC pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (the Act) since the end of the fiscal year covered by our Annual Report referred to in (a) above.
- (c) The description of our common stock contained in our registration statement on Form 8-A, filed February 6, 2006, pursuant to Section 12(g) of the Securities Exchange Act of 1934

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

We are not incorporating any information from any filed documents furnished under either Item 2.02 or Item 7.01 of any Current Report on Form 8-K. Unless expressly incorporated into this Registration Statement, a report furnished on Form 8-K subsequent to the date hereof shall not be incorporated by reference into this Registration Statement, except as to specific sections of such statements as set forth therein.

Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any subsequently filed document which also is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

**Item 8. Exhibits.**

<b>Exhibit Number</b>	<b>Description</b>
4.1(1)	2006 Equity Incentive Plan.
4.2(2)	Forms of Stock Option Agreement under the 2006 Equity Incentive Plan.
5.1	Opinion of Wilson Sonsini Goodrich & Rosati, Professional Corporation.
23.1	Consent of Deloitte & Touche LLP, Independent Registered Public Accounting Firm.
23.2	Consent of Wilson Sonsini Goodrich & Rosati, Professional Corporation (see Exhibit 5.1).
24.1	Power of Attorney (see page II-5).

- (1) Incorporated by reference to Exhibit 10.4 to the Registrant's Registration Statement (No. 333-128820) on Form S-1, as amended, filed on January 24, 2006.
  
- (2) Incorporated by reference to Exhibit 10.5 to the Registrant's Registration Statement (No. 333-128820) on Form S-1, as amended, filed on January 24, 2006.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, NightHawk Radiology Holdings, Inc., a corporation organized and existing under the laws of the State of Delaware, 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 Coeur d'Alene, State of Idaho, on this 15<sup>th</sup> day of September, 2008.

NIGHTHAWK RADIOLOGY HOLDINGS, INC.

By: /s/ PAUL E. BERGER, M.D.  
 Paul E. Berger  
 President and Chief Executive Officer  
 (Principal Executive Officer)

**POWER OF ATTORNEY**

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Paul E. Berger and Paul E. Cartee, and each of them, as his attorneys-in-fact, with full power of substitution in each, for him in any and all capacities to sign any and all amendments to this Registration Statement on Form S-8, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that each of said attorneys-in-fact, or his substitutes, may 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 below by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
/s/ PAUL E. BERGER, M.D. Paul E. Berger, M.D.	President, Chief Executive Officer and Director (Principal Executive Officer)	September 15, 2008
/s/ JON D. BERGER Jon D. Berger	Senior Vice President, Strategy and Business Development and Director	September 15, 2008
/s/ DAVID J. BROPHY David J. Brophy, PhD	Director	September 15, 2008
/s/ PETER Y. CHUNG Peter Y. Chung	Director	September 15, 2008
/s/ CHARLES R. BLAND Charles R. Bland	Director	September 15, 2008
/s/ DAVID M. ENGERT David M. Engert	Director	September 15, 2008
/s/ DAVID R. SANKARAN David R. Sankaran	Senior Vice President and Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	September 15, 2008

David R. Sankaran

**INDEX TO EXHIBITS**

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