

THERMAGE INC  
Form S-8  
November 27, 2006

As filed with the Securities and Exchange Commission on November 27, 2006

Registration No. 333-

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# SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

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## FORM S-8

### REGISTRATION STATEMENT

*Under*

*The Securities Act of 1933*

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## THERMAGE, INC.

(Exact name of Registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

68-0373593  
(I.R.S. Employer

Identification Number)

25881 Industrial Boulevard

Hayward, California 94545

(Address of principal executive offices)

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1997 STOCK OPTION PLAN

2006 EQUITY INCENTIVE PLAN

2006 EMPLOYEE STOCK PURCHASE PLAN

(Full title of the plans)

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**Stephen J. Fanning**

**President and Chief Executive Officer**

**Thermage, Inc.**

**25881 Industrial Boulevard**

**Hayward, California 94545**

**(510) 782-2286**

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

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*Copy to:*

**David J. Saul, Esq.**

**Wilson Sonsini Goodrich & Rosati**

**Professional Corporation**

**650 Page Mill Road**

**Palo Alto, CA 94304-1050**

**(650) 493-9300**

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**CALCULATION OF REGISTRATION FEE**

	Amount to be Registered	Proposed	Proposed	Amount of Registration
		Maximum Offering Price Per Share	Maximum Aggregate Offering Price	
<b>Title of Securities to be Registered</b>	<b>Registered</b>	<b>Share</b>	<b>Price</b>	<b>Fee</b>
Common Stock \$0.001 par value	3,264,347 shares (1)	\$ 2.26(2)	\$ 7,377,425(3)	\$ 789.38
Common Stock \$0.001 par value	2,845,878 shares (4)	\$ 6.46(5)	\$ 18,384,372	\$ 1,967.13
Common Stock \$0.001 par value	250,000 shares (6)	\$ 5.49(7)	\$ 1,372,500	\$ 146.86
<b>TOTAL</b>	<b>6,360,225 shares</b>		<b>\$ 27,134,297</b>	<b>\$ 2,903.37(8)</b>

- (1) 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 three subtotals. This subtotal represents the sum of shares issuable upon exercise of presently outstanding options (options that have been granted as of the date of this Registration Statement) issued under the 1997 Stock Option Plan.
- (2) Computed in accordance with Rule 457(h) under the Securities Act of 1933, as amended, solely for the purpose of calculating the total registration fee. Computation based on the weighted average exercise price (rounded to the nearest cent) at which the options outstanding

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whose exercise will result in the issuance of the shares being registered may be exercised.

- (3) Calculated in accordance with Rule 457(h) based on the aggregate exercise price for all presently outstanding options described in note 1 above.
  - (4) This subtotal represents the sum of shares issuable upon exercise of options that have not yet been granted under the 1997 Stock Option Plan as of the date of this Registration Statement and shares to be granted under the 2006 Equity Incentive Plan.
  - (5) Estimated in accordance with Rule 457(h) solely for the purpose of calculating the total registration fee. Computation based upon the average of the high and low prices of our common stock as reported in The Nasdaq Global Market on November 24, 2006.
  - (6) This subtotal represents the number of shares authorized to be issued under the 2006 Employee Stock Purchase Plan.
  - (7) Estimated in accordance with Rule 457(h) solely for the purpose of calculating the total registration fee. Computation based upon 85% (see explanation in following sentence) of the average of the high and low prices of our common stock as reported in The Nasdaq Global Market on November 24, 2006. Pursuant to the 2006 Employee Stock Purchase Plan, which plan is incorporated by reference herein, the purchase price of a share of common stock shall be an amount equal to 85% of the fair market value of a share of common stock on the Offering Date or the Exercise Date (as defined in such plan), whichever is lower.
  - (8) In connection with the filing of the Registration Statement on Form S-1 (333-136501) of Thermage, Inc., \$9,229 was initially paid on August 10, 2006, which was adjusted to \$9,598 and the required additional fee paid on October 24, 2006. The amount required under that filing was subsequently reduced to \$6,645, leaving a balance of \$2,953. Thus, the fee of \$2,903.37 for this Registration Statement is offset against the balance remaining after the filing fee for the Registration Statement on Form S-1 was paid in full. As a result, no filing fee is due in connection with this filing.
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**THERMAGE, INC.**

**REGISTRATION STATEMENT ON FORM S-8**

**PART II**

**INFORMATION REQUIRED IN REGISTRATION STATEMENT**

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

There are hereby incorporated by reference in this Registration Statement the following documents and information heretofore filed by Thermage, Inc. with the Securities and Exchange Commission:

- (a) Our prospectus dated November 9, 2006, filed pursuant to Rule 424(b) (the Prospectus ) under the Securities Act of 1933, as amended (the Securities Act ), which contains our audited financial statements for the fiscal year ended December 31, 2005.
- (b) 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 ) (other than information contained in Current Reports on Form 8-K that is deemed furnished and not filed), since the end of the fiscal year covered by the Prospectus referred to in (a) above.
- (c) Our description of the common stock contained in our Registration Statement on Form 8-A filed pursuant to Section 12(b) of the Exchange Act, and as declared effective on November 9, 2006, and any amendment or report filed for the purpose of updating such description.

All documents filed by us pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act on or after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement which indicates that all securities offered 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.

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 other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

**Item 4. Description of Securities.**

Not applicable.

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

Certain members of Wilson Sonsini Goodrich & Rosati, Professional Corporation, and investment partnerships of which such persons are partners, beneficially own less than 0.5% of our Common Stock.

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

Our amended and restated certificate of incorporation and bylaws provide that we will indemnify our directors and officers, and may indemnify our other employees and agents, to the fullest extent permitted by

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the General Corporation Law of the State of Delaware. Under our bylaws, we are also empowered to enter into indemnification agreements with our directors and officers and to purchase insurance on behalf of any person whom we are required or permitted to indemnify. We have procured and intend to maintain a directors and officers liability insurance policy that insures such persons against the costs of defense, settlement or payment of a judgment under certain circumstances.

We have entered into indemnification agreements with our directors, officers and others. Under these agreements, we are required to indemnify them against all expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any actual or threatened proceeding, if any of them may be made a party to such proceeding because he or she is or was one of our directors, officers, employees or agents. We are obligated to pay these amounts only if the officer or director acted in good faith and in a manner that he or she reasonably believed to be in, or not opposed to, our best interests. The indemnification agreements also set forth procedures that will apply in the event of a claim for indemnification thereunder.

In addition, our amended and restated certificate of incorporation provides that the liability of our directors for monetary damages shall be eliminated to the fullest extent permissible under the General Corporation Law of the State of Delaware. This provision in our amended and restated certificate of incorporation does not eliminate a director's duty of care and, in appropriate circumstances, equitable remedies such as an injunction or other forms of non-monetary relief would remain available. Each director will continue to be subject to liability for any breach of the director's duty of loyalty to us and for acts or omissions not in good faith or involving intentional misconduct or knowing violations of law. This provision also does not affect a director's responsibilities under any other laws, such as the federal securities laws or other state or federal laws.

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

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

Not applicable.

**Item 8. Exhibits.**

**Exhibit**

<b>Number</b>	<b>Description</b>
4.1*	Specimen Common Stock certificate of the Registrant.
5.1	Opinion of Wilson Sonsini Goodrich & Rosati, Professional Corporation.
10.2*	1997 Stock Option Plan.
10.3*	2006 Equity Incentive Plan.
10.4*	2006 Employee Stock Purchase Plan.
23.1	Consent of 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).

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\* Incorporated by reference to exhibits filed with our Registration Statement on Form S-1 (file no. 333-136501), and as declared effective on November 9, 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 statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement;

(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 (i) and (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.

(4) That, for the purpose of determining liability of the Registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, the undersigned Registrant undertakes that in a primary offering of securities of the undersigned Registrant pursuant to this Registration Statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned Registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned Registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned Registrant or used or referred to by the undersigned Registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned Registrant or its securities provided by or on behalf of the undersigned Registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned Registrant to the purchaser.

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 Securities and Exchange Commission such indemnification is against public policy as expressed in the 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 of 1933 and will be governed by the final adjudication of such issue.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the Registrant, Thermage, 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 Hayward, State of California, on this 27<sup>th</sup> day of November, 2006.

THERMAGE, INC.

By: /s/ Stephen J. Fanning  
 Stephen J. Fanning  
 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 Stephen J. Fanning and Lauren DeBuono, jointly and severally, as his attorneys-in-fact, with full power of substitution in each, for him in any and all capacities to sign any 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/ STEPHEN J. FANNING  (Stephen J. Fanning)	President, Chief Executive Officer and Director (Principal Executive Officer)	November 27, 2006
/s/ LAUREEN DeBUONO  (Laureen DeBuono)	Chief Financial Officer (Principal Accounting Officer)	November 27, 2006
/s/ ROBERT F. BYRNES  (Robert F. Byrnes)	Director	November 27, 2006
/s/ SAMUEL D. COLELLA  (Samuel D. Colella)	Director	November 27, 2006
(Joseph DeVivo)	Director	
/s/ EDWARD W. KNOWLTON, MD  (Edward W. Knowlton, MD)	Director	November 27, 2006
/s/ KENNETH LUDLUM	Director	November 27, 2006



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(Kenneth Ludlum)

/s/ MARK M. SIECZKAREK

Director

November 27, 2006

(Mark M. Sieczkarek)

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**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

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**EXHIBITS**

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Registration Statement on Form S-8

**THERMAGE, INC.**

November 27, 2006

**INDEX TO EXHIBITS**

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