

SECURITIES AND EXCHANGE COMMISSION

FORM S-1/A

General form of registration statement for all companies including face-amount certificate companies [amend]

Filing Date: **1997-12-16**
SEC Accession No. **0001047469-97-007968**

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FILER

SPIROS DEVELOPMENT CORP II INC

CIK: **1047600** | IRS No.: **330774288** | State of Incorporation: **DE** | Fiscal Year End: **1231**
Type: **S-1/A** | Act: **33** | File No.: **333-37673** | Film No.: **97739331**
SIC: **2834** Pharmaceutical preparations

Mailing Address
7475 LUSK BLVD
SAN DIEGO CA 92121

Business Address
7475 LUSK BLVD.
SAN DIEGO CA 92121
6194572553

DURA PHARMACEUTICALS INC/CA

CIK: **882098** | IRS No.: **953645543** | State of Incorporation: **DE** | Fiscal Year End: **1231**
Type: **S-3/A** | Act: **33** | File No.: **333-37673-01** | Film No.: **97739332**
SIC: **2834** Pharmaceutical preparations

Mailing Address
7475 LUSK BLVD
SAN DIEGO CA 92121

Business Address
7475 LUSK BLVD
SAN DIEGO CA 92121
6194572553

REGISTRATION NO. 333-37673/37673-01

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

AMENDMENT NO. 5
TO FORM S-1

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

SPIROS DEVELOPMENT CORPORATION II, INC.

(Exact name of registrant as specified in its charter)

<TABLE>			
<S>	DELAWARE	<C>	5122
	(State or other jurisdiction of incorporation or organization)	<C>	(Primary Standard Industrial Classification Code Number)
			(I.R.S. Employer Identification Number)
</TABLE>			

7475 LUSK BOULEVARD, SAN DIEGO, CALIFORNIA 92121 (619) 457-2553
(Address and telephone number, including area code, of registrant's principal executive offices)

AMENDMENT NO. 5
TO FORM S-3

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

DURA PHARMACEUTICALS, INC.

(Exact name of registrant as specified in its charter)

<TABLE>			
<S>	DELAWARE	<C>	5122
	(State or other jurisdiction of incorporation or organization)	<C>	(Primary Standard Industrial Classification Code Number)
			95-3645543 (I.R.S. Employer Identification Number)
</TABLE>			

7475 LUSK BOULEVARD, SAN DIEGO, CALIFORNIA 92121 (619) 457-2553

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

CAM L. GARNER
Chairman, President and Chief Executive Officer
DURA PHARMACEUTICALS, INC.

DAVID S. KABAKOFF
Chairman, President and Chief Executive Officer
SPIROS DEVELOPMENT CORPORATION II, INC.

7475 Lusk Boulevard
San Diego, California 92121
(619) 457-2553

c/o Dura Pharmaceuticals, Inc.
7475 Lusk Boulevard
San Diego, California 92121
(619) 457-2553

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

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

COPIES TO:

FAYE H. RUSSELL, ESQ.
BROBECK, PHLEGER & HARRISON LLP
550 West "C" Street, Suite 1300
San Diego, California 92101
(619) 234-1966

MARK KESSEL, ESQ.
SHEARMAN & STERLING
599 Lexington Avenue
New York, New York 10022
(212) 848-4000

APPROXIMATE DATE OF COMMENCEMENT OF PROPOSED SALE TO THE PUBLIC:
AS SOON AS PRACTICABLE AFTER THE EFFECTIVE DATE OF THIS REGISTRATION STATEMENT.

* If the securities being registered on this form are being offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box: /X/

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering: / /

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering: / /

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering: / /

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box: / /

THE REGISTRANTS HEREBY AMEND THIS REGISTRATION STATEMENT ON SUCH DATE OR DATES AS MAY BE NECESSARY TO DELAY ITS EFFECTIVE DATE UNTIL THE REGISTRANTS SHALL FILE A FURTHER AMENDMENT WHICH SPECIFICALLY STATES THAT THE REGISTRATION STATEMENT SHALL THEREAFTER BECOME EFFECTIVE IN ACCORDANCE WITH SECTION 8(A) OF THE SECURITIES ACT OF 1933 OR UNTIL THE REGISTRATION STATEMENT SHALL BECOME EFFECTIVE ON SUCH DATE AS THE COMMISSION ACTING PURSUANT TO SAID SECTION 8(A) MAY DETERMINE.

* SOLELY WITH RESPECT TO THE FORM S-3.

SIGNATURES

PURSUANT TO THE REQUIREMENTS OF THE SECURITIES ACT OF 1933, SPIROS DEVELOPMENT CORPORATION II, INC. HAS DULY CAUSED THIS REGISTRATION STATEMENT TO BE SIGNED ON ITS BEHALF BY THE UNDERSIGNED, THEREUNTO DULY AUTHORIZED, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ON THE 16TH DAY OF DECEMBER, 1997.

SPIROS DEVELOPMENT CORPORATION II, INC.

By: /s/ DAVID S. KABAKOFF

DAVID S. KABAKOFF
CHAIRMAN, PRESIDENT AND
CHIEF EXECUTIVE OFFICER

PURSUANT TO THE REQUIREMENTS OF THE SECURITIES ACT OF 1933, THIS REGISTRATION STATEMENT HAS BEEN SIGNED OF BEHALF OF SPIROS DEVELOPMENT

CORPORATION II, INC. BY THE FOLLOWING PERSONS IN THE CAPACITIES AND ON THE DATES INDICATED.

SIGNATURE	TITLE	DATE
/s/ DAVID S. KABAKOFF ----- DAVID S. KABAKOFF	Chairman, President and Chief Executive Officer (Principal Executive Officer)	December 16, 1997
* ----- ERLE T. MAST	Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	December 16, 1997
* ----- CAM L. GARNER	Director	December 16, 1997
*/s/ DAVID S. KABAKOFF ----- BY: DAVID S. KABAKOFF, ATTORNEY-IN-FACT		

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SIGNATURES

PURSUANT TO THE REQUIREMENTS OF THE SECURITIES ACT OF 1933, DURA PHARMACEUTICALS, INC. CERTIFIES THAT IT HAS REASONABLE GROUNDS TO BELIEVE THAT IT MEETS ALL OF THE REQUIREMENTS FOR FILING ON FORM S-3 AND HAS DULY CAUSED THIS REGISTRATION STATEMENT TO BE SIGNED ON ITS BEHALF BY THE UNDERSIGNED, THEREUNTO DULY AUTHORIZED, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ON THE 16TH DAY OF DECEMBER, 1997.

<TABLE>
<S>

<C>	<C>	
	DURA PHARMACEUTICALS, INC.	
BY:	/s/ CAM L. GARNER	

	CAM L. GARNER	
	CHAIRMAN, PRESIDENT AND	
	CHIEF EXECUTIVE OFFICER	

</TABLE>

PURSUANT TO THE REQUIREMENTS OF THE SECURITIES ACT OF 1933, THIS REGISTRATION STATEMENT HAS BEEN SIGNED ON BEHALF OF DURA PHARMACEUTICALS, INC. BY THE FOLLOWING PERSONS IN THE CAPACITIES AND ON THE DATES INDICATED.

<TABLE>
<CAPTION>

SIGNATURE	TITLE	DATE
<C>	<S>	<C>
/s/ CAM L. GARNER ----- CAM L. GARNER	Chairman, President and Chief Executive Officer (Principal Executive Officer)	December 16, 1997
/s/ JAMES W. NEWMAN ----- JAMES W. NEWMAN	Senior Vice President, Finance and Administration, and Chief Financial Officer (Principal Financial and Accounting Officer)	December 16, 1997

/s/ DAVID S. KABAKOFF	Executive Vice President and Director	December 16, 1997
----- DAVID S. KABAKOFF		
* -----	Senior Vice President, Sales and Marketing, and Director	December 16, 1997
WALTER F. SPATH		
* -----	Director	December 16, 1997
JAMES C. BLAIR		
* -----	Director	December 16, 1997
HERBERT J. CONRAD		

</TABLE>

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<TABLE>
<CAPTION>

SIGNATURE	TITLE	DATE
-----	-----	-----
<C> * -----	<S> Director	<C> December 16, 1997
JOSEPH C. COOK, JR.		
* -----	Director	December 16, 1997
DAVID F. HALE		
* -----	Director	December 16, 1997
GORDON V. RAMSEIER		
* -----	Director	December 16, 1997
CHARLES G. SMITH		
* /s/ CAM S. GARNER -----		
BY: CAM L. GARNER, ATTORNEY-IN-FACT		

</TABLE>

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EXHIBIT INDEX

<TABLE>
<CAPTION>

EXHIBIT NUMBER	DESCRIPTION
-----	-----
<C> 1.1++	<S> Form of U.S. Purchase Agreement.
1.2++	Form of International Purchase Agreement.
3.1++	Certificate of Incorporation of Spiros Corp. II.
3.2++	By-laws of Spiros Corp. II.
3.3++	Amended and Restated Certificate of Incorporation of Spiros Corp. II (to be effective immediately prior to closing).
3.4++	Amended and Restated By-laws of Spiros Corp. II (to be effective immediately prior to closing).
4.1++	Purchase Option (included in Exhibit 3.3).
4.2++	Form of Warrant Agreement, including form of Warrant.
4.3++	Form of Warrant (included in Exhibit 4.2).
4.4+++	Specimen Unit Certificate.
4.5+++	Specimen Stock Certificate for Dura Common Stock.

4.6+++	Specimen Stock Certificate for Spiros Corp. II Common Stock.
4.7+++	Specimen Stock Certificate for Spiros Corp. II Special Shares.
5.1++	Opinion of Brobeck, Phleger & Harrison LLP as to legality of the securities being registered, including consent.
8.1+	Opinion of Brobeck, Phleger & Harrison LLP as to certain tax matters, including consent.
10.1++	Form of Technology License Agreement.
10.2++	Form of Development Agreement.
10.3++	Form of Albuterol and Product Option Agreement.
10.4++	Form of Manufacturing and Marketing Agreement.
10.5++	Form of Services Agreement.
10.6++	Spiros Corp. II 1997 Stock Option Plan.
10.7++	Form of Spiros Corp. II Notice of Grant of Stock Option
10.8++	Form of Spiros Corp. II Stock Option Agreement
10.9++	Form of Addendum to Stock Option Agreement
10.10++	Form of Spiros Corp. II Indemnification Agreement for Directors.
10.11++	Form of Spiros Corp. II Indemnification Agreement for Officers.
23.1++	Consent of Brobeck, Phleger & Harrison LLP (included in Exhibits 5.1 and 8.1).
23.2++	Consent of Deloitte & Touche LLP, Independent Auditors.
23.3++	Consent of Kleinfeld, Kaplan and Becker, regulatory counsel.
24.1++	Powers of Attorney.
27.1++	Financial Data Schedule of Spiros Corp. II.

</TABLE>

+ As amended.

++ Previously filed.

+++ Previously filed and incorporated herein by reference in the Company's
Registration Statement on Form 8-A, File No. 333-37673/37673-01 filed on
December 11, 1997.

December 16, 1997

Dura Pharmaceuticals, Inc.
7475 Lusk Boulevard
San Diego, California 92121

Spiros Development Corporation II, Inc.
7475 Lusk Boulevard
San Diego, California 92121

Ladies and Gentlemen:

We have acted as counsel to Dura Pharmaceuticals, Inc., a Delaware corporation ("Dura"), and, in certain limited matters, to Spiros Development Corporation II, Inc., a Delaware corporation ("Spiros Corp. II"), in connection with the offering ("Offering") of units consisting of one share of the Callable Common Stock of Spiros Corp. II ("Spiros Corp. II Common Stock") and one warrant ("Warrant") to purchase one-fourth of one share of the Common Stock of Dura (the "Units"), pursuant to Spiros Corp. II's and Dura's Registration Statement on Forms S-1/S-3 (the "Registration Statement").

In connection with this opinion, we have examined the Registration Statement and related Prospectuses, Dura's Amended and Restated Certificate of Incorporation, as amended through the date hereof, Dura's bylaws, as amended through the date hereof, Spiros Corp. II's Certificate of Incorporation (including a copy of the Amended and Restated Certificate of Incorporation to be filed by Spiros Corp. II immediately prior to the closing of the Subscription Offering), and Spiros Corp. II's bylaws, as amended through the date hereof. We have also reviewed the originals, or copies certified to our satisfaction, of the Technology License Agreement, the Development Agreement, the Manufacturing and Marketing Agreement, the Services Agreement, the Albuterol and Product Option Agreement and such other agreements (the "Agreements") and such records, documents, certificates, memoranda and other instruments as in our judgment are necessary or appropriate to enable us to render the opinion expressed below (the "Documents"). We are relying (without any independent investigation thereof) upon the truth and accuracy of the statements, covenants, representations and warranties set forth in the Registration Statement, the Agreements and the Documents.

In rendering the opinions set forth below, we have relied (or will rely) upon the following additional representations and assumptions:

1. The form of Agreements and Documents supplied to us that we reviewed in connection with rendering opinions hereunder will be validly executed in substantially the same form in which they have been filed as exhibits to the Registration Statement and will be binding and enforceable in accordance with their terms.
2. All parties will perform under such Agreements in accordance with their terms.
3. There are no other or further agreements which would alter, amend or otherwise materially affect the relationships created by or described in the above listed Agreements and Documents or described in the Registration Statement.

Our opinions represent only our best judgment regarding the application of federal income tax laws under the Internal Revenue Code of 1986, as amended (the "Code"), existing judicial decisions, administrative regulations and published rulings and procedures. Our opinion is not binding upon the Internal Revenue Service or the courts, and there is no assurance that the Internal Revenue Service will not successfully assert contrary positions. Furthermore, no assurance can be given that future legislative, judicial decisions or administrative changes, applicable either on a prospective or retroactive basis, might not materially alter our opinions. Nevertheless, we undertake no responsibility to advise you of any new developments in the application or interpretation of the federal income tax laws.

Based on and subject to the foregoing, we are of the opinion that the statements in the Registration Statement and the Prospectuses (as amended and supplemented through the date of issuance) under the captions "United States Federal Income Tax Consequences" and "United States Taxation of Non-U.S. Persons," to the extent they constitute matters of law or legal conclusions with respect thereto, have been prepared or reviewed by us and are correct in all material respects.

We express no opinion as to any other tax issues affecting persons acquiring, holding or disposing of the Units, the Spiros Corp. II Common Stock, the Warrants or the Common Stock of Dura issuable upon exercise of the Warrants or Dura's Purchase Option (as defined in the Registration Statement) or any other party to any of the Agreements, nor does our opinion address state, local or foreign tax consequences that may result from the transactions.

We consent to the use of this opinion as an exhibit to the Registration Statement.

Respectfully,

/s/ Brobeck, Phleger & Harrison LLP

BROBECK, PHLEGER & HARRISON LLP