

SECURITIES AND EXCHANGE COMMISSION

FORM S-8

Initial registration statement for securities to be offered to employees pursuant to employee benefit plans

Filing Date: **2001-04-30**
SEC Accession No. **0001021408-01-500488**

([HTML Version](#) on [secdatabase.com](#))

FILER

SOMNUS MEDICAL TECHNOLOGIES INC

CIK: **1026405** | IRS No.: **770423465** | Fiscal Year End: **1231**
Type: **S-8** | Act: **33** | File No.: **333-59876** | Film No.: **1617768**
SIC: **3841** Surgical & medical instruments & apparatus

Mailing Address
285 N WOLFE
SUNNYVALE CA 94086

Business Address
285 N WOLFE RD
SUNNYVALE CA 94086
4087739121

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-8
REGISTRATION STATEMENT
Under
The Securities Act of 1933

SOMNUS MEDICAL TECHNOLOGIES, INC.
(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

77-0423465
(I.R.S. Employer
Identification Number)

285 N. Wolfe Road
Sunnyvale, CA 94086
(408) 773-9121

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

1997 Employee Stock Purchase Plan
(Full title of the plans)

John G. Schulte
Chief Executive Officer and President
Somnus Medical Technologies, Inc.
285 N. Wolfe Road
Sunnyvale, CA 94086
(408) 773-9121

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

Copy to:
David J. Saul, Esq.
Wilson Sonsini Goodrich & Rosati
Professional Corporation
650 Page Mill Road
Palo Alto, CA 94304-1050
(650) 493-9300

<TABLE>
<CAPTION>

CALCULATION OF REGISTRATION FEE

| <S> | <C> | <C> | <C> | <C> |
|---|---------------------------------------|--|--|----------------------------------|
| Title of Securities to be Registered | Maximum Amount to be Registered | Proposed Maximum Offering Price | Proposed Maximum Aggregate Offering | Amount of Registration Fee |

| | | Per Share | Price | |
|------------------------|-------------------|------------|--------------|---------|
| Common Stock | | | | |
| \$0.001 par value..... | 145,535 shares(1) | \$1.207(2) | \$175,660.75 | \$43.92 |
| TOTAL: | 145,535 shares | | \$175,660.75 | \$43.92 |

- (1) This subtotal represents the number of shares authorized to be issued under the 1997 Employee Stock Purchase Plan.
- (2) Estimated in accordance with Rule 457(h) under the Securities Act of 1933 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 the Common Stock as reported by The Nasdaq National Market on April 25, 2001. Pursuant to the 1997 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 Enrollment Date or the Exercise Date (as defined in such Plan), whichever is lower.

SOMNUS MEDICAL TECHNOLOGIES, INC.
REGISTRATION STATEMENT ON FORM S-8

STATEMENT UNDER GENERAL INSTRUCTION E - REGISTRATION OF ADDITIONAL SECURITIES

The Registrant previously filed a Registration Statement on Form S-8 with the Securities and Exchange Commission (SEC File No. 333-43325) (the Previous Form S-8) on Decemember 24, 1997, in connection with the 1997 Employee Stock Purchase Plan (the "Plan"). This Registration Statement registers additional shares of the Registrant's Common Stock to be issued pursuant to the Plan. Accordingly, the contents of the Previous Form S-8, including periodic reports that the Registrant filed after the Previous Form S-8 to maintain current information about the Registrant, are incorporated by reference into this Registration Statement pursuant to General Instruction E of Form S-8.

Item 3. Incorporation by Reference.

- There is hereby incorporated by reference in this Registration Statement the Annual Report on Form 10-K for the fiscal year ended December 31, 2000, filed pursuant to Section 13 of the Securities Exchange Act of 1934, as amended (the "Exchange Act) on March 29, 2001 and information heretofore filed by the Registrant with the Securities and Exchange Commission:

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 8. Exhibits.

<TABLE>
<CAPTION>

| Exhibit Number | Description |
|----------------|---|
| 4.2* | 1997 Employee Stock Purchase Plan. |
| 5.1 | Opinion of counsel as to the legality of securities being registered. |
| 23.1 | Consent of counsel (contained in Exhibit 5.1). |
| 23.2 | Consent of Ernst & Young LLP, Independent Auditors. |
| 24.1 | Power of Attorney (see page II-2). |

</TABLE>

*Incorporate by reference to Exhibit 10.12 filed with the Company's Registration

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, 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 Sunnyvale, State of California, on this 30th day of April, 2001.

SOMNUS MEDICAL TECHNOLOGIES, INC.

By: /s/ John G. Schulte

John G. Schulte, Chief Executive Officer
and President (Principal Executive
Officer)

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints John G. Schulte and Robert D. McCulloch, jointly and severally, as his attorneys-in-fact, with full power of substitution in each, for him or her 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, as amended, this registration statement has been signed below by the following persons in the capacities and on the dates indicated.

| <TABLE> <CAPTION> Signature ----- | Title ----- | Date ---- |
|---|--|-----------------------|
| <S> /s/ John G. Schulte ----- John G. Schulte | <C> Chief Executive Officer, President and Director (Principal Executive Officer) | <C> April 30, 2001 |
| /s/ Robert D. McCulloch ----- Robert D. McCulloch | Vice President of Finance and Chief Financial Officer (Principal Financial and Accounting Officer) | April 30, 2001 |
| /s/ Abhi Acharya, Ph.D. ----- Abhi Acharya, Ph.D. | Director | April 30, 2001 |
| /s/ Mark. B. Logan ----- Mark. B. Logan | Director | April 30, 2001 |
| ----- Stuart D. Edwards | Director | April 30, 2001 |
| /s/ David B. Musket ----- David B. Musket | Director | April 30, 2001 |
| /s/ Woodrow A. Myers, Jr., M.D. | Director | April 30, 2001 |

Woodrow A. Myers, Jr., M.D.

</TABLE>

II-2

April 30, 2001

Somnus Medical Technologies, Inc.
285 N. Wolfe Road
Sunnyvale, CA 94086

Re: Registration Statement on Form S-8

Ladies and Gentlemen:

We have examined the Registration Statement on Form S-8 to be filed by you with the Securities and Exchange Commission on April 30, 2001 (the "Registration Statement"), in connection with the registration under the Securities Act of 1933, as amended, of an aggregate of 145,535 shares of your Common Stock, par value \$0.001 per share (the "Shares"), which are reserved for issuance pursuant to the 1997 Employee Stock Purchase Plan, 47,049 shares of which are reserved for issuance. As legal counsel for Somnus Medical Technologies, Inc., we have examined the proceedings taken and are familiar with the proceedings proposed to be taken by you in connection with the issuance and sale of the Shares pursuant to the Plan.

It is our opinion that the Shares, when issued and sold in the manner described in the Plan and pursuant to the agreement that accompanies each grant under the Plan, will be legally and validly issued, fully-paid and non-assessable.

We consent to the use of this opinion as an exhibit to the Registration Statement, and further consent to the use of our name wherever appearing in the Registration Statement and any amendments thereto.

Very truly yours,

WILSON SONSINI GOODRICH & ROSATI

/s/ David J. Saul

CONSENT OF ERNST & YOUNG LLP, INDEPENDENT AUDITORS

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the 1997 Employee Stock Purchase Plan, of our report dated January 30, 2001, with respect to the consolidated financial statements and schedule of Somnus Medical Technologies, Inc. included in its Annual Report (Form 10-K) for the year ended December 31, 2000, filed with the Securities and Exchange Commission.

/s/ ERNST & YOUNG LLP

Palo Alto, California
April 30, 2001