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BALDWIN TECHNOLOGY CO INC

Form S-8

January 31, 2006

As filed with the Securities and Exchange Commission on January 31, 2006

Registration No.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
-----

FORM S-8  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933  
-----

BALDWIN TECHNOLOGY COMPANY, INC.  
(Exact name of Registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

13-3258160  
(IRS Employer  
Identification No.)

-----  
2 Trap Falls Road  
Suite 402  
Shelton, Connecticut 06484  
(203) 402-1000  
(Address, including telephone number, of Principal Executive Offices)

-----  
BALDWIN TECHNOLOGY COMPANY, INC.  
2005 EQUITY COMPENSATION PLAN

(Full title of the Plan)

-----  
c/o Helen P. Oster, Esq.  
Corporate Secretary  
Baldwin Technology Company, Inc.  
2 Trap Falls Road  
Suite 402  
Shelton, Connecticut 06484  
(203) 402-1000  
(Name, address, and telephone number,  
including area code, of agent for service)

-----  
Copy to:  
Gary S. Rothstein, Esq.  
Morgan, Lewis & Bockius LLP  
101 Park Avenue  
New York, New York 10178  
(212) 309-6000  
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CALCULATION OF REGISTRATION FEE

Title of securities to be registered (1)	Amount to be registered (1)	Proposed maximum offering price per share (2)	Proposed maximum aggregate offering price
Class A Common Stock, \$.01 par value	1,200,000 shares	\$4.125	\$4,950,

- (1) Pursuant to Rule 416(c) of the Securities Act of 1933, the number of shares being registered shall include an indeterminate number of additional shares which may become issuable as a result of stock splits, stock dividends, or similar transactions in accordance with the anti-dilution provisions of the 2005 Equity Compensation Plan.
- (2) Estimated pursuant to paragraphs (c) and (h) of Rule 457 solely for the purpose of calculating the registration fee, based upon the average of the reported high and low sales prices for Class A Common Stock of Baldwin Technology Company, Inc. as reported on the American Stock Exchange on January 25, 2006.
- (3) Calculated pursuant to Section 6(b) of the Securities Act of 1933 as follows: Proposed maximum aggregate offering price multiplied by 0.000107.

EXPLANATORY NOTE

This Registration Statement on Form S-8 relates to 1,200,000 shares of common stock authorized for issuance under the 2005 Equity Compensation Plan approved by our stockholders on November 8, 2005.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

- Item 1. Plan Information.  
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Omitted as permitted.
- Item 2. Registrant Information and Employee Plan Annual Information.  
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Omitted as permitted.

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PART II

INFORMATION REQUIRED IN THE  
REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.  
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The following documents filed by Baldwin Technology Company, Inc., a Delaware corporation (the "Company"), with the Securities and Exchange Commission (the "Commission") are incorporated by reference into this Registration Statement:

- (a) The Company's latest Annual Report on Form 10-K for the fiscal year ended June 30, 2005, filed with the Commission on September 28, 2005, pursuant to Section 13(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act").
- (b) The Company's Quarterly Report on Form 10-Q for the fiscal quarter ended September 30, 2005, filed with the Commission on November 14, 2005.
- (c) The description of the Company's Class A Common Stock, par value \$.01 per share (the "Common Stock"), contained in its Registration Statement on Form 8-A (Reg. No. 0-20382) filed with the Commission on November 20, 1986 pursuant to Section 12 of the Exchange Act, including any amendment or report filed for the purpose of updating such description.

All reports and other documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment 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 a part hereof from the date of filing of such documents.

Any statement contained herein or in a document all or a portion of which is 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 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 4. Description of Securities.  
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Not applicable.

Item 5. Interests of Named Experts and Counsel.  
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Not applicable.

Item 6. Indemnification of Directors and Officers.  
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The Company's By-Laws provide that the Company shall, to the fullest extent permitted by Section 145 of the General Corporation Law of the State of Delaware, as amended from time to time, indemnify all persons whom it may indemnify pursuant thereto.

Section 145 of the General Corporation Law of the State of Delaware permits a corporation, under specified circumstances, to indemnify its directors, officers, employees or agents against expenses (including attorney's fees), judgments, fines and amounts paid in settlements actually and reasonably incurred by them in connection with any action, suit or proceeding brought by third parties by reason of the fact that they were or are directors, officers, employees or agents of the Company, if such directors, officers, employees or agents acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reason to believe their conduct was unlawful. In a derivative action, i.e., one by or in the right of the corporation, indemnification may be made only for expenses actually and reasonably incurred by directors, officers, employees or agents in connection with the defense or settlement of an action or suit, and only with respect to a matter as to which they shall have acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification shall be made if such person shall have been adjudged liable to the corporation, unless and only to the extent that the court in which the action or suit was brought shall determine upon application that the defendant directors, officers, employees or agents are fairly and reasonably entitled to indemnity for such expenses despite such adjudication of liability.

Article Seven of the Company's Amended and Restated Certificate of Incorporation provides that no director of the Company will be personally liable to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director except (a) for any breach of the director's duty of loyalty to the Company or its stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) under Section 174 of the General Corporation Law of the State of Delaware or (d) for any transaction from which the director derived an improper personal benefit.

The Registrant has procured Directors and Officers liability insurance for wrongful acts. This is an indemnity policy for the Registrant to protect it against liability assumed or incurred under the above indemnification provisions, including defense provisions, on behalf of the directors and officers. The directors and officers are thus indemnified against loss arising from any civil claims or claims by reason of any wrongful act done or alleged to have been done while acting in their respective capacities as directors or officers. The policy excludes claims brought about or contributed to by dishonest, fraudulent, criminal or malicious acts or omissions by directors or officers.

Item 7. Exemption from Registration Claimed.

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Not applicable.

Item 8. Exhibits.

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5 Opinion of Morgan, Lewis & Bockius LLP regarding legality of the shares of Class A Common Stock (filed herewith).

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- 23.1 Consent of PricewaterhouseCoopers LLC (filed herewith).
- 23.2 Consent of Morgan, Lewis & Bockius LLP (included in Exhibit 5).
- 24 Power of Attorney (included on the signature page of this Registration Statement).

### 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 (the "Securities Act");

(ii) To reflect in the Prospectus any facts or events arising after the effective date of this 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 this Registration Statement. Notwithstanding the foregoing, any increase or decrease in the 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 and 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 this Registration Statement or any material change to such information in this Registration Statement.

Provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply to this registration on Form S-8, if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the registrant pursuant to Section 13 or Section 15(d) of the 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.

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(4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:

(i) If the registrant is subject to Rule 430C, each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

(5) 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.

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 plans' annual report pursuant to section 15(d) of the

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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.

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 and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act, 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, on January 30, 2006.

BALDWIN TECHNOLOGY COMPANY, INC.

By: /s/ Gerald A. Nathe

-----  
Gerald A. Nathe  
Chairman of the Board and  
Chief Executive Officer

Each person whose signature to this Registration Statement appears below hereby appoints each of Gerald A. Nathe and Helen P. Oster as his or her attorney-in-fact to sign on his or her behalf individually and in the capacity stated below and to file all supplements, amendments and post-effective amendments to this Registration Statement, and any and all instruments or documents filed as a part of or in connection with this Registration Statement or any amendment or supplement thereto, and any such attorney-in-fact may make such changes and additions to this Registration Statement as such attorney-in-fact may deem necessary or appropriate.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed below by the following persons in the capacities and on the dates indicated.

Signature -----	Title -----	Date ----
/s/ Gerald A. Nathe ----- Gerald A. Nathe	Chairman of the Board and Chief Executive Officer (Principal Executive Officer)	January 26,

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/s/ Vijay C. Tharani ----- Vijay C. Tharani	Vice President, Chief Financial Officer and Treasurer (Principal Financial Officer)	January 30,
/s/Leon Richards ----- Leon Richards	Controller (Principal Accounting Officer)	January 26,
----- Mark T. Becker	Director	-----
/s/Rolf Bergstrom ----- Rolf Bergstrom	Director	January 27,
/s/Samuel B. Fortenbaugh, III ----- Samuel B. Fortenbaugh, III	Director	January 24,
/s/Akira Hara ----- Akira Hara	Director	January 26,
----- Judith A. Mulholland	Director	-----
----- Ralph R. Whitney, Jr.	Director	-----

EXHIBIT INDEX

Exhibit -----	Description -----
5	Opinion of Morgan, Lewis & Bockius LLP regarding legality of the shares of Class A Common Stock (filed herewith)
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24	Power of Attorney (included on the signature page of this Registration Statement).