

GenMark Diagnostics, Inc.  
Form S-8  
August 17, 2010

As filed with the Securities and Exchange Commission on August 17, 2010

Registration No. 333-

**SECURITIES AND EXCHANGE COMMISSION**

**WASHINGTON, D.C. 20549**

**FORM S-8**

**REGISTRATION STATEMENT**

*UNDER*

*THE SECURITIES ACT OF 1933*

**GENMARK DIAGNOSTICS, INC.**

(Exact Name of Registrant as Specified in its Charter)

**Delaware**  
(State or Other Jurisdiction of  
Incorporation or Organization)

**5964 La Place Court, Suite 100**  
**Carlsbad, California 92008**

**27-2053069**  
(I.R.S. Employer  
Identification No.)

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(Address of Principal Executive Offices)

**2010 EQUITY INCENTIVE AWARD PLAN**

(Full Title of the Plan)

**Christopher Gleeson**

**Chairman and Interim Chief Executive Officer**

**GenMark Diagnostics, Inc.**

**5964 La Place Court, Suite 100**

**Carlsbad, California 92008**

**(760) 448-4300**

(Name, Address and Telephone Number of Agent For Service)

*Copy to:*

**Michael S. Kagnoff, Esq.**

**DLA PIPER LLP (US)**

**4365 Executive, Suite 1100**

**San Diego, California 92121**

**Telephone: (858) 677-1400**

**Facsimile: (858) 677-1401**

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company)

Smaller reporting company

**CALCULATION OF REGISTRATION FEE**

| Title of Securities                        | Amount<br>to be<br>Registered(1) | Proposed<br>Maximum<br>Offering Price<br>per Share (2) | Proposed<br>Maximum<br>Aggregate<br>Offering Price (2) | Amount of<br>Registration Fee |
|--|----------------------------------|--|--|-------------------------------|
| Common Stock, par value \$0.0001 per share | 2,000,000                        | \$4.51   | \$9,020,000  | \$644.00                      |

(1) In addition, pursuant to Rule 416(c) under the Securities Act of 1933, as amended (the "Securities Act"), this registration statement shall also cover any additional securities that may be necessary to adjust the number of shares reserved for issuance pursuant to the 2010 Equity Award Incentive Plan by reason of any stock split, stock dividend or similar adjustment effected without the Registrant's receipt of consideration that results in an increase in the number of the Registrant's outstanding shares of common stock.

(2) Estimated solely for the purpose of computing the registration fee pursuant to Rule 457 under the Securities Act and based on the average of the high and low prices per share of the Registrant's common stock on August 16, 2010 as reported on The Nasdaq Stock Market.

This registration statement shall become effective upon filing in accordance with Rule 462 under the Securities Act.

**PART I**

**INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS**

The documents containing the information specified in Part I of Form S-8 will be sent or given to employees as specified by Securities and Exchange Commission (the Commission) Rule 428(b)(1). Such documents need not be filed with the Commission either as part of this registration statement or as prospectuses or prospectus supplements pursuant to Rule 424. These documents and the documents incorporated by reference in this registration statement pursuant to Item 3 of Form S-8 (Part II hereof), taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act. In this registration statement, unless the context otherwise requires, the terms we, us, and our, refer both to GenMark Diagnostics, Inc., or GenMark, and its subsidiary, Osmetech plc, or Osmetech.

**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

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

The following documents filed by us with the Commission are incorporated by reference in this registration statement:

- (a) Our prospectus filed with the Commission on June 1, 2010 pursuant to Rule 424(b) of the Securities Act of 1933, as amended (the Securities Act), which contains Osmetech's audited financial statements for our latest fiscal year, and GenMark's audited balance sheet as of March 18, 2010, for which such statements have been filed;
- (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), since the end of the fiscal year covered by the prospectus referred to in (a) above; and
- (c) The description of our common stock contained in the registration statement on Form 8-A (Registration No. 001-34753) filed with the Commission on May 24, 2010.

All documents subsequently filed by the Registrant 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 hereby 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 such documents.

For the purposes of this registration statement, any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded 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.

Under no circumstances will any information filed under current items 2.02 or 7.01 of Form 8-K be deemed incorporated herein by reference unless such Form 8-K expressly provides to the contrary.

You may request a copy of these filings, at no cost, by writing or telephoning us at:

5964 La Place Court, Suite 100

Carlsbad, California 92008

Telephone: 760-448-4300

Facsimile: 760-448-4301

Attn: Chief Financial Officer

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You should rely only on the information provided or incorporated by reference in this registration statement or any related prospectus. We have not authorized anyone to provide you with different information. You should not assume that the information in this registration statement or any related prospectus is accurate as of any date other than the date on the front of the document.

**Item 4. Description of Securities.**

Not applicable.

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

Not applicable.

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

The Registrant is incorporated under the laws of the State of Delaware.

The Registrant's certificate of incorporation and by-laws provide that the Registrant shall indemnify its officers and directors to the full extent permitted by applicable law. Section 145 of the Delaware General Corporation Law provides, in general, that each director and officer of a corporation may be indemnified against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with any threatened, pending or completed legal proceedings in which he or she is involved by reason of the fact that he or she is or was a director or officer, if he or she acted in good faith and in a manner that he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, if he or she had no reasonable cause to believe that his or her conduct was unlawful. If the legal proceeding, however, is by or in the right of the corporation, the director or officer may not be indemnified in respect of any claim, issue or matter as to which he or she has been adjudged to be liable to the corporation unless a court determines otherwise.

The Registrant also maintains insurance for officers and directors against certain liabilities, including liabilities under the Securities Act. The effect of this insurance is to indemnify any officer or director of the Registrant against expenses, including, without limitation, attorneys' fees, judgments, fines and amounts paid in settlement, incurred by an officer or director upon a determination that such person acted in good faith. The premiums for such insurance are paid by the Registrant.

Pursuant to separate indemnification agreements with the Registrant, each officer and director of the Registrant is indemnified against all liabilities relating to his or her position as an officer or director of the Registrant, to the fullest extent permitted under applicable law.

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

Not applicable.

**Item 8. Exhibits.**

See Exhibit Index below.

**Item 9. Undertakings.**

(a) The 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;

(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 end of the estimated maximum offering range may be reflected in the form of a 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 price set forth in the Calculation of Registration Fee table in the effective registration statement; and

(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 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 that are incorporated by reference in this registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment will be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time will 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.

(b) The undersigned Registrant hereby further undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act of 1934 (and, where applicable, each filing of any employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in this registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at the time shall be deemed to be the initial *bona fide* offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the provisions summarized in Item 6 above, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities 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, in the city of Pasadena, state of California, on this 17th day of August, 2010.

**GenMark Diagnostics, Inc.**

By: /s/ Steven Kemper  
Steven Kemper

Chief Financial Officer, Treasurer and Secretary

**POWER OF ATTORNEY**

Each director and/or officer of GenMark Diagnostics, Inc. whose signature appears below constitutes and appoints Steven Kemper as such person's true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for such person and in such person's name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Commission granting unto said attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as such person might or could do in person, hereby ratifying and confirming that said attorney-in-fact and agent or his substitute or substitutes, may lawfully do or cause to be done by virtue of this Power of Attorney.

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities and on the date indicated:

| <b>Signature</b>                              | <b>Title</b>   | <b>Date</b>     |
|---|--|-----------------|
| /s/ Christopher Gleeson                       | Chairman of the Board of Directors and                           | August 17, 2010 |
| Christopher Gleeson                           | Interim Chief Executive Officer<br>(principal executive officer) |                 |
| /s/ Steven Kemper                             | Chief Financial Officer, Treasurer and                           | August 17, 2010 |
| Steven Kemper                                 | Secretary<br>(principal financial and accounting officer)        |                 |
| /s/ Jon Faiz Kayyem<br>Jon Faiz Kayyem, Ph.D. | Chief Scientific Officer and Director                            | August 17, 2010 |
| /s/ Daryl J. Faulkner<br>Daryl J. Faulkner    | Director   | August 17, 2010 |
| /s/ Kevin C. O Boyle<br>Kevin C. O Boyle      | Director   | August 17, 2010 |



**EXHIBIT INDEX**

**Exhibit**

| <b>No.</b> | <b>Description</b>   |
|------------|--|
| 4.1(1)     | Certificate of Incorporation                                 |
| 4.2(2)     | By-Laws  |
| 5          | Opinion of DLA Piper LLP (US).                               |
| 23.1       | Consent of Deloitte & Touche LLP (US).                       |
| 23.2       | Consent of Deloitte LLP (UK).                                |
| 23.3       | Consent of DLA Piper LLP (US) (filed as a part of Exhibit 5) |
| 24.1       | Power of Attorney (contained on signature page).             |
| 99.1(3)    | 2010 Equity Incentive Award Plan.                            |

- (1) Incorporated by reference to Exhibit 3.1 to the Registrant's registration statement on Form S-1 filed on March 19, 2010.
- (2) Incorporated by reference to Exhibit 3.2 to the Registrant's registration statement on Form S-1 filed on March 19, 2010.
- (3) Incorporated by reference to Exhibit 10.15 to the Registrant's registration statement on Form S-1/A filed on April 20, 2010.