

CLEVELAND BIOLABS INC  
Form SB-2/A  
December 06, 2007

As filed with the Securities and Exchange Commission on December 6, 2007  
Registration Number 333-143755

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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

AMENDMENT No. 4  
to FORM SB-2

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

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CLEVELAND BIOLABS, INC.  
(Name of small business issuer in its charter)

**Delaware**  
(State or jurisdiction of  
incorporation or organization)

**8731**  
(Primary Standard Industrial  
Classification Code Number)

**20-0077155**  
(I.R.S. Employer  
Identification No.)

73 High Street  
Buffalo, New York 14203  
(716) 849-6810

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

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**Dr. Michael Fonstein**  
**Chief Executive Officer & President**  
Cleveland BioLabs, Inc.  
73 High Street  
Buffalo, New York 14203  
(716) 849-6810

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

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*Copies to:*

**Ram Padmanabhan, Esq.**  
**Katten Muchin Rosenman LLP**  
**525 West Monroe Street**

**Chicago, Illinois 60661**  
**(312) 902-5200 / (312) 902-1061 (Telecopy)**

**Approximate date of commencement of proposed sale to the public:**

From time to time after the effective date of this Registration Statement, as determined by the selling stockholders.

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

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 statement 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.

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**EXPLANATORY NOTE**

This Amendment No. 4 to the Registration Statement on Form SB-2 (File No. 333-143755) is being filed for the sole purpose of including as Exhibit 3.6, through incorporation by reference, the Second Amended and Restated By-Laws of Cleveland BioLabs, Inc., as adopted by the Board of Directors on December 4, 2007. Accordingly, the pages of the Registration Statement are omitted except for the Exhibits and Exhibit Index thereto.

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**EXHIBITS**

<b>Exhibit No.</b>	<b>Description</b>
3.1	Certificate of Incorporation filed with the Secretary of State of Delaware on June 5, 2003***
3.2	Certificate of Amendment of Certificate of Incorporation filed with the Secretary of State of Delaware on February 25, 2005***
3.3	Certificate of Designation of Series A Participating Convertible Preferred Stock filed with the Secretary of State of Delaware on March 8, 2005***
3.4	Second Certificate of Amendment of Certificate of Incorporation filed with Secretary of State of Delaware on June 30, 2006***
3.5	Certificate of Designations, Preferences and Rights of Series B Convertible Preferred Stock, dated March 16, 2007*****
3.6	Second Amended and Restated By-Laws*****
4.1	Form of Specimen Common Stock Certificate*
4.2	Form of Warrants issues to designees of Sunrise Securities Corp., dated March 2005*
4.3	Form of Warrants issued to underwriters***
4.4	Warrant to Purchase Common Stock issued to ChemBridge Corporation, dated April 27, 2004*
4.5	Form of Series B Warrant*****
4.6	Form of Series C Warrant*****
5.1	Opinion of Katten Muchin Rosenman LLP
10.1	Restricted Stock Agreement between Cleveland BioLabs, Inc. and Michael Fonstein, dated as of July 5, 2003*
10.2	Restricted Stock Agreement between Cleveland BioLabs, Inc. and Yakov Kogan, dated as of July 5, 2003*
10.3	Restricted Stock Agreement between Cleveland BioLabs, Inc. and Andrei Gudkov, dated as of July 5, 2003*
10.4	Library Access Agreement by and between ChemBridge Corporation and Cleveland BioLabs, Inc., effective as of April 27, 2004*
10.5	

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Restricted Stock and Investor Rights Agreement between Cleveland BioLabs, Inc. and ChemBridge Corporation, dated as of April 27, 2004\*

- 10.6 Common Stockholders Agreement by and among Cleveland BioLabs, Inc. and the stockholders named therein, dated as of July 1, 2004\*
- 10.7 Exclusive License Agreement by and between The Cleveland Clinic Foundation and Cleveland BioLabs, Inc., effective as of July 1, 2004\*
- 10.8 Employment Agreement by and between Cleveland BioLabs, Inc. and Dr. Michael Fonstein, dated August 1, 2004\*
- 10.9 Employment Agreement by and between Cleveland BioLabs, Inc. and Dr. Yakov Kogan, dated August 1, 2004\*
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- 10.10 Consulting Agreement between Cleveland BioLabs, Inc. and Dr. Andrei Gudkov, dated August 1, 2004\*
- 10.11 Cooperative Research and Development Agreement by and between the Uniformed Services University of the Health Sciences, the Henry M. Jackson Foundation for the Advancement of Military Medicine, Inc., the Cleveland Clinic Foundation, and Cleveland BioLabs, Inc., dated as of August 1, 2004\*\*
- 10.12 Form of Stock Purchase Agreement between Cleveland BioLabs, Inc. and the Purchasers party thereto, dated as of March 15, 2005\*
- 10.13 Form of Series A Rights Agreement by and among Cleveland BioLabs, Inc. and the parties thereto, dated as of March 15, 2005\*
- 10.14 Employment Agreement by and between Cleveland BioLabs, Inc. and Dr. Farrel Fort, dated June 1, 2005\*
- 10.15 Amendment to Employment Agreement by and between Cleveland BioLabs, Inc. and Dr. Farrel Fort, dated September 30, 2005\*
- 10.16 Amendment to Consulting Agreement between Cleveland BioLabs, Inc. and Dr. Andrei Gudkov, dated as of January 23, 2006\*
- 10.17 Amendment to Restricted Stock Agreement between Cleveland BioLabs, Inc. and Michael Fonstein, dated as of January 23, 2006\*
- 10.18 Amendment to Restricted Stock Agreement between Cleveland BioLabs, Inc. and Yakov Kogan, dated as of January 23, 2006\*
- 10.19 Amendment to Restricted Stock Agreement between Cleveland BioLabs, Inc. and Andrei Gudkov, dated as of January 23, 2006\*
- 10.20 Amendment to Common Stockholders Agreement by and among Cleveland BioLabs, Inc. and the parties thereto, dated as of January 26, 2006\*
- 10.21 Form of Amendment to Series A Rights Agreement by and among Cleveland BioLabs, Inc. and the parties thereto, dated as of February 17, 2006\*
- 10.22 Cleveland BioLabs, Inc. 2006 Equity Incentive Plan\*\*\*
- 10.23 Process Development and Manufacturing Agreement between Cleveland BioLabs, Inc. and SynCo Bio Partners B.V., effective as of August 31, 2006\*\*\*\*
- 10.24 Sponsored Research Agreement between Cleveland BioLabs, Inc. and Roswell Park Cancer Institute Corporation, effective as of January 12, 2007\*\*\*\*\*
- 10.25 Securities Purchase Agreement, dated March 16, 2007\*\*\*\*\*
- 10.26 Registration Rights Agreement, dated March 16, 2007\*\*\*\*\*

- 10.27 Voting Agreement, dated March 16, 2007\*\*\*\*\*
- 10.28 Consulting agreement between Cleveland BioLabs, Inc. and Basic Investors, Inc., dated as of October 10, 2006, as amended April 9, 2007\*\*\*\*\*
- 16.1 Letter on change in certifying accountant\*
- 23.1 Consent of Meaden & Moore, Ltd.
- 23.2 Consent of Katten Muchin Rosenman LLP (included in Exhibit 5.1)
- 24.1 Power of Attorney (previously filed)

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\* Incorporated by reference to Amendment No. 1 to Registration Statement on Form SB-2 as filed on April 25, 2006 (File No. 333-131918).

\*\* Incorporated by reference to Amendment No. 2 to Registration Statement on Form SB-2 as filed on May 31, 2006 (File No. 333-131918).

\*\*\* Incorporated by reference to Amendment No. 3 to Registration Statement on Form SB-2 as filed on July 10, 2006 (File No. 333-131918).

\*\*\*\* Incorporated by reference to Form 8-K as filed on October 25, 2006.

\*\*\*\*\* Incorporated by reference to Form 8-K as filed on January 12, 2007.

\*\*\*\*\* Incorporated by reference to Form 8-K as filed on March 19, 2007.

\*\*\*\*\* Incorporated by reference to Amendment No. 1 to Registration Statement on Form SB-2 as filed on August 10, 2007 (File No. 333-143755).

\*\*\*\*\* Incorporated by reference to Form 8-K as filed on December 5, 2007.

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## UNDERTAKINGS

The undersigned registrant hereby undertakes that it will:

(1) File, during any period in which it offers or sells securities, a post-effective amendment to this registration statement to:

(i) Include any prospectus required by section 10(a)(3) of the Securities Act;

(ii) Reflect in the prospectus any facts or events which, individually or together, represent a fundamental change in the information 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% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(iii) Include any additional or changed material information on the plan of distribution.

(2) For determining any liability under the Securities Act of 1933, treat each post-effective amendment as a new registration statement to the securities offered in the U.S., and the offering of the securities at that time as the initial bona fide offering of those securities.

(3) File a post-effective amendment to remove from registration any of the securities that remain unsold at the end of the offering.

Insofar as indemnification by the undersigned small business issuer for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the small business issuer pursuant to the foregoing provisions, or otherwise, the small business issuer has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act of 1933, 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

In accordance with the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form SB-2, and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Buffalo, Erie County, State of New York, on the 6<sup>th</sup> day of December, 2007.

### CLEVELAND BIOLABS, INC.

By:

/s/ Michael Fonstein

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Michael Fonstein  
Chief Executive Officer and President



Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated below.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
/s/ Michael Fonstein Michael Fonstein	Chief Executive Officer, President and Director (Principal Executive Officer)	December 6, 2007
/s/ John A. Marhofer, Jr. John A. Marhofer, Jr.	Chief Financial Officer (Principal Financial and Accounting Officer)	December 6, 2007
* James Antal	Director	December 6, 2007
* Paul DiCorleto	Director	December 6, 2007
* Andrei Gudkov	Chief Scientific Officer and Director	December 6, 2007
* Bernard L. Kasten	Director, Chairman of the Board	December 6, 2007
* Yakov Kogan	Executive Vice President of Business Development, Secretary and Director	December 6, 2007
* H. Daniel Perez	Director	December 6, 2007
*By: /s/ John A. Marhofer, Jr. John A. Marhofer, Jr. Attorney-in-fact		

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