Rim Semiconductor CO
Form SB-2/A
August 02, 2006

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As filed with the Securities and Exchange Commission on August 1, 2006

Registration No. 333-133508

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

Amendment No. 2
to
Form SB-2

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

RIM SEMICONDUCTOR COMPANY
(Name of small business issuer in its charter)

UTAH	**7830**	**95-4545704**
(State or other jurisdiction of incorporation or organization)	*(Primary Standard Industrial Classification Code Number)*	*(I.R.S. Employer Identification No.)*

305 NE 102nd Avenue, Suite 105, Portland, Oregon 97220
(503) 257-6700
(Address and telephone number of principal executive offices)

305 NE 102nd Avenue, Suite 105, Portland, Oregon 97220
(Address of principal place of business or intended principal place of business)

Brad Ketch
President and Chief Executive Officer
Rim Semiconductor Company
305 NE 102nd Avenue, Suite 105
Portland, Oregon 97220
(503) 257-6700
(Name, address and telephone number of agent for service)

Copy to:

Lawrence B. Mandala
Munck Butrus, P.C.
900 Three Galleria Tower
13155 Noel Road
Dallas, Texas 75240
(972) 628-3600

Approximate date of proposed sale to the public: From time to time after the effective date of this registration statement.

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, check the following box. þ

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) 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. o

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. o

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. o

If delivery of the prospectus is expected to be made pursuant to Rule 434, check the following box. o

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	**Amount to be Registered(1)**	**Proposed Maximum Offering Price Per Unit(2)**	**Proposed Maximum Aggregate Offering Price(2)**	**Amount of Registration Fee(3)**
Common Stock	359,254,481	$ 0.127	$ 45,625,319	$ 4,882

(1) Includes shares of common stock held by the selling shareholders, shares of common stock issuable upon conversion of debentures held by the selling shareholders, shares of common stock issuable upon the exercise of warrants held by the selling shareholders, and the registrant s good faith estimate of certain additional shares of common stock that the registrant may be required to issue to the selling shareholders pursuant to that certain Registration Rights Agreement, dated as of March 6, 2006, among the Company and certain of the selling shareholders. Pursuant to Rule 416 under the Securities Act of 1933, as amended (the Securities Act), the number of shares of common stock registered hereby also includes an indeterminate number of shares of common stock that may be issued as a result of stock splits, stock dividends, recapitalizations or similar events.

(2) Estimated solely for purposes of computing the registration fee in accordance with Rule 457(c) under the Securities Act, based on the average of the high and low prices for the common stock as reported on the OTC Bulletin Board on April 19, 2006.

(3) Previously paid.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this 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.

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The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

SUBJECT TO COMPLETION, DATED , 2006

PROSPECTUS

359,254,481 shares of Common Stock

This prospectus relates to the resale by the selling shareholders of up to 359,254,481 shares of our common stock. The shares offered by this prospectus include:

- shares held by the selling shareholders;
- shares issuable to the selling shareholders upon the conversion of principal and interest on debentures;
- shares issuable to the selling shareholders upon the exercise of options or warrants, and
- shares we could be required to issue to the selling shareholders in the future in the event of certain adjustments to the conversion price of the debentures or the exercise price of the warrants.

We will not receive any proceeds from the resale of these shares by the selling shareholders, but will receive proceeds if any of the options or warrants are exercised for cash, rather than on a cashless basis.

The selling shareholders may sell the shares from time to time at prevailing market prices or in negotiated transactions. Sales may be made directly to purchasers or through brokers or to dealers, who are expected to receive customary commissions or discounts. Each of the selling shareholders may be deemed to be an underwriter, as such term is defined in the Securities Act of 1933. We agreed to pay the expenses of registering these shares.

Our common stock is quoted on the OTC Bulletin Board under the trading symbol RSMI. On July 28, 2006, the last reported sales price per share of our common stock was $0.204.

Investing in our common stock involves significant risks. See Risk Factors beginning on page 4 to read about factors you should consider before buying our common stock.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.

The date of this prospectus is , 2006.

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All references in this prospectus to Rim Semiconductor, the company, we, us or our mean Rim Semiconductor Company and, as the context requires, its subsidiaries.

You should rely only on the information contained in this prospectus and any supplement to this prospectus. Neither we nor the selling shareholders have authorized anyone to provide you with information different from that contained or incorporated by reference in this prospectus. If anyone provides you with different or inconsistent information, you should not rely on it. The selling shareholders are offering to sell, and seeking offers to buy, shares of our common stock only in jurisdictions where offers and sales are permitted. The information contained in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus or of any sale of common stock.

Rim Semiconductor™ and Embarq™ are our trademarks. This prospectus may also contain trademarks and trade names of other companies. All trademarks and trade names appearing in this prospectus are the property of their respective owners.

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PROSPECTUS SUMMARY

This summary highlights some information contained in this prospectus. It is not complete and does not contain all of the information that may be important to you. We urge you to read the entire prospectus carefully, including the **Risk Factors** *and our financial statements and the related notes included in this prospectus, before deciding to invest in shares of our common stock.*

Our Business

We are developing advanced transmission technology products to enable data to be transmitted across copper telephone wire at speeds and over distances that exceed those offered by leading DSL technology providers. Our first chipset in a planned family of transport processors, the Embarq^{tm} E30 (Release 1.3) digital signal processor, was first shown to several prospective customers during the first quarter of fiscal 2006. We completed Release 1.4 in the third fiscal quarter of 2006 are presently working on Release 1.5 of the E30 and Release 1.1 of the Embarq^{tm} E20 analog front end. Our products are designed to substantially increase the capacity of existing copper telephone networks, allowing telephone companies, office building managers, and enterprise network operators to provide enhanced and secure video, data and voice services over the existing copper telecommunications infrastructure. We have agreements with HelloSoft, Inc. and independent consultants to design and develop our products. We began working on the technology underlying our products in 2000. To date, we have not recorded any revenues from the sale of products based on our technology and have not secured any contracts to sell our products.

We expect that system-level products that use our technology will have a significant advantage over existing system-level products that use existing broadband technologies, such as digital subscriber line (DSL), because such products will transmit data faster, and over longer distances. We expect products using our technology will offer numerous advantages to the network operators that deploy them, including the ability to support new services, the ability to offer existing and new services to previously unreachable locations in their network, reduction in total cost of ownership, security and reliability.

In April 2000, our NV Entertainment subsidiary entered into a joint venture production agreement to produce a feature length film, Step into Liquid. We own a 50% interest in the joint venture. The financial condition and results of operations of the joint venture are consolidated with our financial condition and results of operations on the accompanying consolidated financial statements. The film was released to theaters in the United States in 2003 and is currently in foreign and DVD distribution. During the years ended October 31, 2005 and 2004, we recognized revenues of $39,866 and $287,570, respectively, from the film. As a result of impairment reviews during the years ended October 31, 2005 and 2004, we reduced the carrying value of the film to $0 on our balance sheet. We do not intend to make further investment in our entertainment business.

We recognized revenues of $39,866 and $58,874 for the year ended October 31, 2005 and the six months ended April 30, 2006, respectively, representing guaranteed and license payments and foreign distribution fees from the film. We incurred net losses of $4,690,382 and $10,974,722 for the year ended October 31, 2005 and the six months ended April 30, 2006, respectively. Our independent auditors included an explanatory paragraph in their report accompanying our audited consolidated financial statements for the years ended October 31, 2005 and 2004 relating to a substantial doubt about our ability to continue as a going concern. As of April 30, 2006, we had an accumulated deficit of $70,856,278. As of the date of this prospectus, our expenses total approximately $210,000 per month. If our revenues and expenses do not materially change, we believe we have enough funds to sustain our operations until at least September 2007.

Recent Developments

On July 6, 2006, our Board of Directors, after consultations by management and the Audit Committee with our independent registered public accounting firm, concluded that the classification of warrants issued in connection with the 2005 and 2006 convertible debentures was not in accordance with interpretations of Emerging Issues Task Force (EITF) Issue No. 00-19 Accounting for Derivative Financial Instruments Indexed To and Potentially Settled In, a Company s Own Stock. Accordingly, the consolidated financial statements included in our Quarterly Report on Form 10-QSB for the period ended April 30, 2006, as filed on June 14, 2006 (the April 2006 10-QSB) and included herein and our Annual Report on Form 10-KSB for the period ended October 31, 2005, as filed on January 30, 2006 and amended on February 28, 2006 (the

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2005 10-KSB) and included herein have been restated to correct the accounting for the warrants as derivative liabilities. The previously issued consolidated financial statements included in the April 2006 10-QSB and the 2005 10-KSB should not be relied upon.

In March 2006, we raised gross proceeds of $6.0 million from the private placement to 17 institutional and individual investors of our two-year 7% Senior Secured Convertible Debentures. At closing, we received net proceeds of approximately $2.61 million, after the payment of offering related fees and expenses. We used $810,000 of these funds to repay in full bridge loans made to us in December 2005 and January 2006. An additional $2.7 million in net proceeds from these debentures was released to us in April 2006 after our filing of an amendment to our Articles of Incorporation increasing our authorized shares of common stock from 500 million shares to 900 million shares. We intend to use these funds for general corporate purposes.

The debentures are convertible into our common stock at a conversion price equal to 70% of the volume weighted average price of our common stock for the 20 trading days ending on the day immediately prior to the date of conversion. As of the date of this prospectus, $400,000 principal amount of these debentures had been converted into 4,152,824 shares of common stock. If the principal amount of the remaining debentures had been converted on July 28, 2006, the conversion price would have been $0.1285, resulting in our issuance of approximately 43.6 million shares of common stock.

The investors were issued warrants to purchase an aggregate of 70,955,548 shares of our common stock at an exercise price of $0.15 per share. Pond Equities, Inc., a registered broker-dealer who served as placement agent in this transaction, was issued a warrant to purchase 7,095,556 shares of our common stock at an exercise price of $0.15 per share and a warrant to purchase 7,095,556 shares of our common stock at an exercise price of $0.1693 per share. Both the conversion price of the debentures and the exercise price of the warrants are subject to adjustment in certain circumstances. For a more complete description of this financing, see Agreements with the Selling Shareholders.

In February 2006, we obtained a license to include HelloSoft, Inc. s integrated voice over Internet protocol (VoIP) software suite in the Embarq[tm] E30 semiconductor. We believe that the inclusion of VoIP features in our products will enable customers to eliminate components currently placed on their modems that are dedicated to VoIP. We expect this reduction in components will lower their cost of production by more than 20% and eliminate significant design complexity. In exchange for such rights, we have paid to HelloSoft a license fee and will pay certain royalties based on our sales of products including the licensed technology.

Our Corporate Information

We are a Utah corporation organized in 1985. Our principal offices are located at 305 NE 102nd Avenue, Suite 105, Portland, Oregon 97220 and our telephone number is (503) 257-6700. We maintain a website at www.rimsemi.com. Information contained on our website is not part of this prospectus.

Risk Factors

Investing in our common stock involves significant risk. We urge you to consider the information under the caption Risk Factors beginning on page 4 of this prospectus in deciding whether to purchase the common stock offered under this prospectus.

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The Offering

Common stock offered by the selling shareholders	359,254,481 shares. This amount includes 20,480,546 shares of common stock held by the selling shareholders; 152,923,308 shares of common stock issuable to the selling shareholders on the conversion of principal and interest on debentures; 159,202,400 shares of common stock issuable to the selling shareholders on the exercise of options and warrants; and 26,648,227 shares of common stock we could be required to issue to the selling shareholders in the future in the event of certain adjustments to the conversion price of the debentures or the exercise price of the warrants.(1)
Common stock outstanding before the offering	330,899,951 shares
Use of Proceeds	The selling shareholders will receive all of the net proceeds from their sale of the common stock offered by this prospectus. We will not receive any proceeds from the sale of such common stock. We would, however, receive proceeds from the exercise of options or warrants to purchase up to 159,202,400 shares of common stock that are held by the selling shareholders, to the extent such options or warrants are exercised for cash. Under certain circumstances, many of these options or warrants may be exercised on a cashless basis. We will not receive proceeds from any cashless exercises. The selling shareholders are not obligated to exercise these options or warrants, and there can be no assurance that they will do so. If all of these options and warrants were exercised for cash, we would receive gross proceeds of approximately $24.7 million. Any proceeds we receive from the exercise of these options and warrants will be used for working capital and general corporate purposes.
OTC Bulletin Board Symbol	RSMI

(1) The number of shares issuable to the selling shareholders on conversion of principal and interest on the debentures we issued in 2005 and 2006, and the number of shares issuable in the event of certain adjustments to the conversion price of these debentures or the exercise price of the warrants issued in connection with the placement of these debentures, are based upon our current good faith estimates of the number of shares issuable. As required by our agreements with the purchasers of the debentures, we estimated the number of shares issuable on conversion of principal and interest on the debentures we issued in 2005 and 2006 by multiplying by 150% and 200%, respectively, the number of shares into which the principal and interest on such debentures could have been converted on April 20, 2006.

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RISK FACTORS

Investing in our common stock involves a high degree of risk. You should carefully consider the risks described below and the other information in this prospectus before you purchase any of our common stock. If any of these actually occurs, our business, financial condition or results of operations could suffer. In this event you could lose all or part of your investment.

Risks Related to Our Business

We have a history of losses and we expect these losses to continue for the foreseeable future.

Since inception, we have incurred significant net losses. We incurred net losses of $4,690,382 and $5,506,287 for the years ended October 31, 2005 and 2004, respectively and $10,974,722 for the six months ended April 30, 2006. As of April 30, 2006, we had an accumulated deficit of $70,856,278. We expect to continue to incur net losses for the foreseeable future as we continue to develop our products and semiconductor technology. We have been funding our operations through the sale of our securities and expect to continue doing so for the foreseeable future. Our ability to generate and sustain significant additional revenues or achieve profitability will depend upon the factors discussed elsewhere in this Risk Factors section. We cannot assure you that we will achieve or sustain profitability or that our operating losses will not increase in the future. If we do achieve profitability, we cannot be certain that we can sustain or increase profitability on a quarterly or annual basis in the future. We expect to increase expense levels on research and development, engineering, manufacturing, marketing, sales and administration as we begin to market our products, and to invest in new semiconductor technologies. These expenditures will necessarily precede the realization of substantial revenues from the sales of our semiconductor products, if any, which may result in future operating losses.

We may need to raise additional funds in order to achieve our business objectives.

As of July 28, 2006, we had cash balances of $3,026,160. Although management believes funds on hand will enable us to meet our liquidity needs at least through September 2007, circumstances may arise that would require us to raise additional capital in order to meet our liquidity needs and satisfy our current business plan prior to the receipt of revenues from our semiconductor business. Even after we begin to sell our products, we do not yet know what payment terms will be required by our customers or if our products will be successful. At the present time, we have no commitments for any additional financing, and there can be no assurance that, if needed, additional capital will be available to us on commercially acceptable terms or at all. We may have difficulty obtaining additional funds as and if needed, and we may have to accept terms that would adversely affect our shareholders. Additional equity financings are likely to be dilutive to holders of our common stock and debt financing, if available, may involve significant payment obligations and covenants that restrict how we operate our business.

We also may be required to seek additional financing in the future to respond to increased expenses or shortfalls in anticipated revenues, accelerate product development and deployment, respond to competitive pressures, develop new or enhanced products, or take advantage of unanticipated acquisition opportunities. We cannot be certain we will be able to find such additional financing on commercially reasonable terms, or at all. Covenants in our agreements with certain selling shareholders may impede our ability to obtain additional financing. See Agreements with the Selling Shareholders. If we are unable to obtain additional financing when needed, we could be required to modify our business plan in accordance with the extent of available financing. We also may not be able to accelerate the development and deployment of our products, respond to competitive pressures, develop new or enhanced products or take advantage of unanticipated acquisition opportunities.

We have no agreement relating to revenue generating activities. No assurance can be provided that we will successfully conclude any such agreement.

We presently have no agreement or understanding with any third party to purchase our products or build equipment using our products, and no assurance can be provided that we will be successful in concluding any significant-revenue generating agreement on terms commercially acceptable to us or at all.

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The inclusion of a going concern qualification in our audited financial statements may make it difficult for us to raise additional capital.

Our independent registered public accountants have included an explanatory paragraph in their report accompanying our audited consolidated financial statements for the years ended October 31, 2005 and 2004 relating to a substantial doubt about our ability to continue as a going concern. This qualification may make it more difficult for us to raise additional capital when needed. Our auditors believe that there are conditions that raise substantial doubt about our ability to continue as a going concern. The accompanying consolidated financial statements do not include any adjustments relating to the recoverability of reported assets or liabilities should we be unable to continue as a going concern.

Our operating results may vary significantly due to the cyclical nature of the semiconductor industry and any such variations could adversely affect the market price of our common stock.

We operate in the semiconductor industry, which is cyclical and subject to rapid technological change. The semiconductor industry, from time to time, experiences significant downturns characterized by diminished product demand, accelerated erosion of prices and excess production capacity. These downturns in the semiconductor industry may be severe and prolonged, and could delay or hinder the market acceptance of our semiconductor technologies and seriously impact our revenues and harm our business, financial condition and results of operations. This industry also periodically experiences increased demand and production capacity constraints, which may affect our ability to ship products utilizing the semiconductor technologies in future periods. Accordingly, our quarterly results may vary significantly as a result of the general conditions in the semiconductor industry, which could cause our stock price to decline.

In addition, the worldwide telecommunications industry from time to time has experienced a significant downturn. In such an event, wireline telecommunications carriers may reduce their capital expenditures, cancel or delay new service introductions, and reduce their workforces and equipment inventories. They may take a cautious approach to acquiring new equipment from equipment manufacturers. Together or separately, these actions would have a negative impact on our business. A downturn in the worldwide telecommunications industry may cause our operating results to fluctuate from year to year, which also may tend to increase the volatility of the price of our common stock and harm our business.

We have a limited operating history in the telecommunications industry and, consequently, there is limited historical financial data upon which an evaluation of our business prospects could be made.

We have only been engaged in the semiconductor business since February 2000. We have not begun commercial shipments of our semiconductors, and therefore have not generated any revenues from our semiconductor business. As a result, we have no historical financial data that can be used in evaluating our business prospects and in projecting future operating results. For example, we cannot forecast operating expenses based on our historical results, and we are instead required to forecast expenses based in part on future revenue projections. In addition, our ability to accurately forecast our revenue going forward is limited.

You must consider our prospects in light of the risks, expenses and difficulties we might encounter because we are at an early stage of product introduction in a new and rapidly evolving market. Many of these risks are described under the sub-headings below. We may not successfully address any or all of these risks and our business strategy may not be successful.

Our success is contingent upon the incorporation of our products into successful products offered by leading equipment manufacturers and the non-incorporation of our products into such equipment could adversely affect our business prospects.

Our products will not be sold directly to the end-user of broadband services; rather, they will be components of other products. As a result, we must rely upon equipment manufacturers to design our products into their equipment. If equipment that incorporates our products is not accepted in the marketplace, we may not achieve adequate sales volume, which would have a negative effect on our results of operations. Accordingly, we must correctly anticipate the price, performance and functionality requirements of these data equipment manufacturers. We must also successfully develop products containing our semiconductor

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technology that meet these requirements and make such products available on a timely basis and in sufficient quantities. Further, if there is consolidation in the data equipment manufacturing industry, or if a small number of data equipment manufacturers otherwise dominate the market for data equipment, then our success will depend upon our ability to establish and maintain relationships with these market leaders. If we do not anticipate trends in the market for products enabling the digital transmission of data, voice and video to homes and business enterprises over existing copper wire telephone lines and meet the requirements of equipment manufacturers, or if we do not successfully establish and maintain relationships with leading data equipment manufacturers, then our business, financial condition and results of operations will be seriously harmed.

Because we will depend on third parties to manufacture, package and test our semiconductors, we may experience delays in receiving semiconductor devices.

We do not own or operate a semiconductor fabrication facility. Rather, semiconductor devices that will contain our technology will be manufactured at independent foundries. We intend to rely solely on third-party foundries and other specialist suppliers for all of our manufacturing, packaging and testing requirements. However, these parties may not be obligated to supply products to us for any specific period, in any specific quantity or at any specific price, except as may be provided in a particular purchase order that has been accepted by one of them. As a result, we will not directly control semiconductor delivery schedules, which could lead to product shortages, poor quality and increases in the costs of our products. Because the semiconductor industry is currently experiencing high demand, we may experience delays in receiving semiconductor devices from foundries due to foundry scheduling and process problems. We cannot be sure that we will be able to obtain semiconductors within the time frames and in the volumes required by us at an affordable cost or at all. Any disruption in the availability of semiconductors or any problems associated with the delivery, quality or cost of the fabrication packaging and testing of our products could significantly hinder our ability to deliver products to our customers.

In order to secure sufficient manufacturing capacity, we may enter into various arrangements that could be costly, including:

- option payments or other prepayments to a subcontractor;
- nonrefundable deposits in exchange for capacity commitments;
- contracts that commit us to purchase specified quantities of products over extended periods;
- issuance of our equity securities to a subcontractor; and
- other contractual relationships with subcontractors.

We may not be able to make any such arrangements in a timely fashion or at all, and any arrangements may be costly, reduce our financial flexibility and not be on terms favorable to us. Moreover, if we are able to secure facility capacity, we may be obligated to use all of that capacity or incur penalties. These penalties and obligations may be expensive and require significant capital and could harm our business.

We may incur substantial expenses developing new products before we earn associated net revenues and may not ultimately sell a large volume of our products.

We are currently working on new products and we anticipate that we will incur substantial development expenditures prior to generating associated net revenues from a commercially deployable version (if any). We anticipate receiving limited orders for our products during the period that potential customers test and evaluate them. This test and evaluation period typically lasts from three to six months or longer, and volume production of an equipment manufacturer s product incorporating our products typically would not begin until this test and evaluation period has been completed. As a result, a significant period of time may lapse between product development and sales efforts and the realization of revenues from volume ordering by customers of our products. In addition, achieving a design win with a customer does not necessarily mean that this customer will order our products. A design win is not a binding commitment by a customer to purchase products. Rather, it is a decision by a customer to use our products in the design process of that customer s equipment. A customer can choose at any time to discontinue using our products in that customer s designs or product

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development efforts. Even if our products are chosen to be incorporated into a customer s equipment, we may still not realize significant net revenues from that customer if that customer s products are not commercially successful.

We may be unable to adequately protect our proprietary rights or may be sued by third parties for infringement of their proprietary rights.

We outsource to independent third parties all significant design, development and testing activities relating to our products. Our success depends significantly on our ability to obtain and maintain patent, trademark and copyright protection for our intellectual property, to preserve our trade secrets and to operate without infringing the proprietary rights of third parties. If we are not adequately protected, our competitors could use the intellectual property that we have developed to enhance their products and services, which could harm our business.

We rely on patent protection, as well as a combination of copyright and trademark laws, trade secrets, confidentiality provisions and other contractual provisions, to protect our proprietary rights, but these legal means afford only limited protection. Despite any measures taken to protect our intellectual property, unauthorized parties may copy aspects of our semiconductor technology or obtain and use information that we regard as proprietary. In addition, the laws of some foreign countries may not protect our proprietary rights as fully as do the laws of the United States. If we litigated to enforce our rights, it would be expensive, divert management resources and may not be adequate to protect our intellectual property rights.

The telecommunications industry is characterized by the existence of a large number of patents and frequent litigation based on allegations of trade secret, copyright or patent infringement. We may inadvertently infringe a patent of which we are unaware. In addition, because patent applications can take many years to issue, there may be a patent application now pending of which we are unaware that will cause us to be infringing when it is issued in the future. Although we are not currently involved in any intellectual property litigation, we may be a party to litigation in the future to protect our intellectual property or as a result of our alleged infringement of another s intellectual property, forcing us to do one or more of the following:

- Cease selling, incorporating or using products or services that incorporate the challenged intellectual property;

- Obtain from the holder of the infringed intellectual property right a license to sell or use the relevant technology, which license may not be available on reasonable terms; or

- Redesign those products or services that incorporate such technology.

A successful claim of infringement against us, and our failure to license the same or similar technology, could adversely affect our business, asset value or stock value. Infringement claims, with or without merit, would be expensive to litigate or settle, and would divert management resources.

Our market is highly competitive and our products or technology may not be able to compete effectively with other products or technologies.

The market for high-speed telecommunications products is highly competitive, and we expect that it will become increasingly competitive in the future. Our competitors, including Centillium Communications, Inc., Conexant Systems, Inc., PMC-Sierra, Texas Instruments Incorporated, Ikanos Communications, ST Microelectronics N.V., Metalink Ltd., Broadcom Corporation, Infineon Technologies A.G. and others, have developed and are currently marketing technologies that also address the existing technical impediments of using existing copper networks as broadband options or are otherwise substantially similar to our products. Our competitors include some of the largest, most successful domestic and international telecommunications companies and other companies with well-established reputations in the broadband telecommunications industry. Some of our competitors operate their own fabrication facilities. Our competitors have longer operating histories and possess substantially greater name recognition, financial, sales and marketing, manufacturing, technical, personnel, and other resources than we have. As a result, these competitors may be able to adapt more quickly to new or emerging technologies and changes in customer requirements. They may also be able to devote greater resources to the promotion and sale of their products. These competitors may also have

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pre-existing relationships with our potential customers. Further, in the event of a manufacturing capacity shortage, these competitors may be able to manufacture products when we are unable to do so. In all of our target markets, we also may face competition from newly established competitors, suppliers of products based on new or emerging technologies, and customers who choose to develop wire based solutions that are functionally similar to our products. Although we believe we will be able to compete based on the special features of our products, they will incorporate new concepts and may not be successful even if they are superior to those of our competitors.

In addition to facing competition from the above-mentioned suppliers, our semiconductors will compete with products using other broadband access technologies, such as cable modems, wireless, satellite and fiber optic telecommunications technology. Commercial acceptance of any one of these competing solutions, or new technologies, could decrease demand for our proposed products. We cannot assure you that we will be able to compete successfully or that competitive pressures will not materially and adversely affect our business, financial condition and results of operations.

We must keep pace with rapid technological changes in the semiconductor industry and broadband communications market in order to be competitive.

Our success will depend on our ability to anticipate and adapt to changes in technology and industry standards. We will also need to develop and introduce new and enhanced products to meet our customers changing demands. The semiconductor industry and broadband communications market are characterized by rapidly changing technology, evolving industry standards, frequent new product introductions and short product life cycles. In addition, this industry and market continues to undergo rapid growth and consolidation. A cyclical slowdown in the semiconductor industry or other broadband communications markets could materially and adversely affect our business, financial condition and results of operations. Our success will also depend on the ability of our potential telecommunications equipment customers to develop new products and enhance existing products for the broadband communications markets and to introduce and promote those products successfully. The broadband communications markets may not continue to develop to the extent or in the timeframes that we anticipate. If new markets do not develop as we anticipate, or if upon their deployment our products do not gain widespread acceptance in these markets, our business, financial condition and results of operations could be materially and adversely affected.

Because our success is dependent upon the broad deployment of data services by telecommunications service providers, we may not be able to generate substantial revenues if such deployment does not occur.

Our products are designed to be incorporated in equipment that is targeted at end-users of data services offered by wire-line telecommunications carriers. Consequently, the success of our products depends upon the decision by telecommunications service providers to broadly deploy data technologies and the timing of such deployment. If service providers do not offer data services on a timely basis, or if there are technical difficulties with the deployment of these services, sales of our products would be adversely affected, which would have a negative effect on our results of operations. Factors that may impact data deployment include:

- A prolonged approval process, including laboratory tests, technical trials, marketing trials, initial commercial deployment and full commercial deployment;

- The development of a viable business model for data services, including the capability to market, sell, install and maintain data services;

- Cost constraints, such as installation costs and space and power requirements at the telecommunications service provider s central office;

Evolving industry standards; and

Government regulation.

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The complexity of our products could result in unforeseen delays or expense and in undetected defects, which could adversely affect the market acceptance of new products and damage our reputation with prospective customers.

Highly complex products such as the semiconductors that we expect to offer frequently contain defects and bugs when they are first introduced or as new versions are released. If our products contain defects, or have reliability, quality or compatibility problems, our reputation may be damaged and customers may be reluctant to buy our semiconductors, which could materially and adversely affect our ability to retain existing customers or attract new customers. In addition, these defects could interrupt or delay sales to our potential customers. In order to alleviate these problems, we may have to invest significant capital and other resources. Although our suppliers and potential customers will test our products it is possible that these tests will fail to uncover defects. If any of these problems are not found until after we have commenced commercial production of products, we may be required to incur additional development costs and product recall, repair or replacement costs. These problems may also result in claims against us by our customers or others. In addition, these problems may divert our technical and other resources from other development efforts. Moreover, we would likely lose, or experience a delay in, market acceptance of the affected product, and we could lose credibility with our prospective customers.

Governmental regulation concerning the technical specifications of semiconductor technologies that are deployed in the telephone networks could adversely affect the market acceptance of our semiconductors.

The jurisdiction of the Federal Communication Commission (FCC) extends to the entire US communications industry, including potential customers for our semiconductors. Future FCC regulations affecting the broadband access industry may adversely affect our business. In addition, international regulatory bodies such as The American National Standards Institute (ANSI) and The Committee T1E1.4 in North America, European Telecommunications Standards Institute (ETSI) in Europe and ITU-T and the Institute of Electrical and Electronics Engineers, Inc. (IEEE) worldwide are beginning to adopt standards and regulations for the broadband access industry. These domestic and foreign standards, laws and regulations address various aspects of Internet, telephony and broadband use, including issues relating to liability for information retrieved from or transmitted over the Internet, online context regulation, user privacy, taxation, consumer protection, security of data, access by law enforcement, tariffs, as well as intellectual property ownership, obscenity and libel. Changes in laws, standards and/or regulations, or judgments in favor of plaintiffs in lawsuits against service providers, e-commerce and other Internet companies, could adversely affect the development of e-commerce and other uses of the Internet. This, in turn, could directly or indirectly materially adversely impact the broadband telecommunications and data industry in which our customers operate. To the extent our customers are adversely affected by laws or regulations regarding their business, products or service offerings, this could result in a material and adverse effect on our business, financial condition and results of operations.

In addition, highly complex products such as the semiconductors that we expect to offer are subject to rules, limitations and requirements as set forth by international standards bodies such as The American National Standards Institute (ANSI) and The Committee T1E1.4 in North America, European Telecommunications Standards Institute (ETSI) in Europe and ITU-T and the Institute of Electrical and Electronics Engineers, Inc. (IEEE) worldwide, and as adopted by the governments of each of the countries that we intend to market in. There are some FCC regulations in the United States pertaining to the use of the available bandwidth spectrum that at present have been interpreted by some of our target customers as discouraging to the technical innovations that we are bringing to market. Further, regulations affecting the availability of broadband access services generally, the terms under which telecommunications service providers conduct their business, and the competitive environment among service providers, for example, could have a negative impact on our business.

We depend on attracting, motivating and retaining key personnel and the failure to attract, motivate or retain needed personnel could adversely affect our business.

We are highly dependent on the principal members of our management and on our technology advisors and the technology staff of our development partners. The loss of their services might significantly delay or prevent the achievement of development or strategic objectives. Our success depends on our ability to retain certain key employees and our partner relationships, and to attract additional qualified employees. Competition for these employees is intense. We cannot assure you that we will be able to retain existing personnel and partners or attract and retain highly qualified employees in the future.

Risks Related to this Offering and Our Capital Structure

This offering may have an adverse impact on the market price of our common stock.

This prospectus relates to the sale or distribution of up to 359,254,481 shares of common stock by the selling security holders. We will not receive proceeds from these sales except to the extent certain options or warrants are exercised for cash, and have prepared this prospectus principally in order to meet our contractual obligations to some of the selling security holders. The sale of this block of stock, or even the possibility of its sale, may adversely affect the trading market for our common stock and reduce the price available in that market.

Our shareholders will experience significant dilution upon the conversion of our 2006 Debentures and 2005 Debentures because these debentures convert at a discount to the market price of our common stock at the time of conversion.

At any time and from time to time, all or any portion of the principal amount of the two-year 7% Senior Secured Convertible Debentures we issued in March 2006 (the 2006 Debentures) then outstanding may, at the option of the holders of the debentures, be converted into shares of common stock at the conversion price then in effect. Similarly, currently and from time to time all or any portion of the principal amount of the three-year 7% Senior Secured Convertible Debentures we issued in May 2005 (the 2005 Debentures) then outstanding may, at the option of the holders of the debentures, be converted into shares of common stock at the conversion price then in effect. Additionally, all accrued but unpaid interest on 2006 Debentures and 2005 Debentures is payable upon conversion, at our option, in shares of common stock at the conversion price for those debentures then in effect.

The number of shares issuable upon any conversion will be equal to the outstanding principal amount of convertible debenture to be converted, divided by the applicable conversion price on the conversion date, plus (if we have elected to pay such amount in shares of common stock) the amount of any accrued but unpaid interest on the convertible debenture through the conversion date, divided by the conversion price on the conversion date. The conversion price of the 2006 Debentures is equal to the lower of (i) 70% of the volume weighted average closing price per share of our common stock for the 20 trading days immediately preceding the conversion date and (ii) the lowest purchase price or conversion price of any shares of common stock or securities convertible into shares of common stock that we subsequently offer or issue on or prior to the date on which the aggregate outstanding principal amount of the 2006 Debentures is first equal to or less than $1.5 million. The conversion price of the 2005 Debentures is equal to 70% of the volume weighted average closing price per share of our common stock for the five trading days immediately preceding the conversion date. Due to the conversion mechanics of these convertible debentures, decreases in the conversion price result in an increase in the total number of shares issuable upon conversion.

The number of shares to be acquired by each of the holders of the 2006 Debentures or 2005 Debentures upon conversion cannot exceed the number of shares that, when combined with all other shares of common stock and securities then owned by each holder and its affiliates, would result in any one of them owning more than 4.99% of our then outstanding common stock.

There is an inverse relationship between our stock price and the number of shares issuable upon conversion of the 2006 Debentures and 2005 Debentures. That is, the higher the market price of our common stock at the time a debenture is converted, the fewer shares we would be required to issue, and the lower the market price of our common stock at the time a debenture is converted, the more shares we would be required to issue. This inverse relationship is demonstrated by the table set forth below, which shows the number of

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shares into which $6 million of the 2006 Debentures would be convertible at various prices of our common stock.

Estimated 20-Day VWAP of Common Stock	Debenture Conversion Price	Number of Shares Issuable on Conversion of $6 Million Principal Amount of Debentures
$0.25	$ 0.175	34,285,714
$0.20	$ 0.140	42,857,143
$0.15	$ 0.105	57,142,857
$0.10	$ 0.070	85,714,286
$0.05	$ 0.035	