

Penumbra Inc  
Form 8-K  
September 29, 2015

**UNITED STATES**

**SECURITIES AND EXCHANGE COMMISSION**

**WASHINGTON, D.C. 20549**

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**FORM 8-K**

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**CURRENT REPORT**

**Pursuant to Section 13 or 15(d)**

**of the Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): **September 23, 2015**

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**PENUMBRA, INC.**

(Exact name of registrant as specified in its charter)

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**Delaware**

**001-37557**

**05-0605598**

(State of incorporation) (Commission File No.) (IRS Employer Identification No.)

**One Penumbra Place**

**1351 Harbor Bay Parkway**

**Alameda, CA 94502**

(Address of principal executive offices and zip code)

Registrant's telephone number, including area code: **(510) 748-3200**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**Item 5.03. Amendments to Certificate of Incorporation or Bylaws; Change in Fiscal Year.**

As previously contemplated by the disclosure in its Registration Statement on Form S-1 (File No. 333-206412), Penumbra, Inc. (the “Company”) took the following actions in connection with the closing of the Company’s initial public offering of shares of its common stock (the “Closing”) on September 23, 2015.

*Amendment and Restatement of Certificate of Incorporation*

Immediately prior to the Closing, on September 23, 2015, the Company filed an amended and restated certificate of incorporation (the “A&R Certificate”) with the Secretary of State of the State of Delaware. The A&R Certificate amended and restated the Company’s sixth amended and restated certificate of incorporation to, among other things:

authorize 300,000,000 shares of common stock;

authorize 5,000,000 shares of undesignated preferred stock (the “Undesignated Preferred Stock”) that may be issued from time to time by the Company’s board of directors (the “Board”) in one or more series with such designations, powers, preferences and other rights as the Board determines;

permit the Board to adopt, amend or repeal the Company’s bylaws (the “Bylaws”) without obtaining stockholder approval, and require that any amendment of the Bylaws by the stockholders receive the affirmative vote of the holders of not less than 66 2/3% of the total voting power of all outstanding securities entitled to vote in the election of directors;

provide for a classified Board consisting of three classes and prohibit the removal of directors by the stockholders without cause, through the vote of a majority of the total voting power of all outstanding securities entitled to vote in the election of directors;

prohibit stockholder action by written consent in lieu of a meeting, subject to the rights of any preferred stock then outstanding fixed by the Board, thereby requiring all stockholder actions to be taken at a meeting of the Company’s stockholders;

require that special meetings of the stockholders be called only by the Board;

provide for the indemnification of directors and officers of the Company, in each case to the fullest extent authorized by the General Corporation Law of the State of Delaware; and

require that any amendment of certain provisions of the A&R Certificate by the stockholders receive the affirmative vote of the holders of not less than 66 2/3% of the total voting power of all outstanding securities entitled to vote in the election of directors.

*Certificate of Retirement*

Immediately upon the Closing, all outstanding shares of the Company's Series A preferred stock, Series B preferred stock, Series C preferred stock, Series D preferred stock, Series E preferred stock and Series F preferred stock (collectively, the "Designated Preferred Stock") automatically converted into shares of the Company's common stock on a one-for-one basis, and such shares of Designated Preferred Stock were cancelled, retired and eliminated from the shares that the Company is authorized to issue and shall not be reissued by the Company. Accordingly, immediately upon the Closing, on September 23, 2015, the Company filed a certificate of retirement of preferred stock (the "Certificate of Retirement") with the Secretary of State of the State of Delaware, which eliminated from the A&R Certificate all references to the Designated Preferred Stock and reduced the total authorized number of shares of the capital stock of the Company by the number of shares of Designated Preferred Stock so retired, such that the total number of authorized shares of the Company following the filing of the Certificate of Retirement is 305,000,000, consisting of 300,000,000 shares of common stock and 5,000,000 shares of Undesignated Preferred Stock.

*Restated Certificate*

Immediately following the effectiveness of the Certificate of Retirement, on September 23, 2015, the Company filed a restated certificate of incorporation (the “Restated Certificate”) with the Secretary of State of the State of Delaware. The Restated Certificate only restates and integrates and does not further amend the provisions of the A&R Certificate that was filed with the Secretary of State of the State of Delaware on September 23, 2015, as amended by the Certificate of Retirement that was filed with the Secretary of State of the State of Delaware on September 23, 2015.

The foregoing descriptions of the A&R Certificate, Certificate of Retirement and Restated Certificate are qualified in their entirety by reference to the A&R Certificate, Certificate of Retirement and Restated Certificate, copies of which are filed herewith as Exhibits 3.1, 3.2 and 3.3, respectively.

*Amendment and Restatement of Bylaws*

Immediately prior to the Closing, on September 23, 2015, the Company’s amended and restated bylaws (the “Restated Bylaws”) became effective. The Restated Bylaws amended the Company’s bylaws to, among other things:

· prohibit stockholder action by written consent in lieu of a meeting, subject to the rights of any preferred stock then outstanding fixed by the Board, thereby requiring all stockholder actions to be taken at a meeting of the Company’s stockholders;

· require that special meetings of the stockholders be called only by the Board;

· establish advance notice, content and procedural requirements for notice provided by stockholders for nominations for election to the Board and for proposals to be brought by stockholders before any meeting of the Company’s stockholders;

· set forth the rights, powers and manner of acting of the Board and officers of the Company;

· provide that the exclusive forum for certain actions will be a state court within the State of Delaware; and

permit the Board to adopt, amend or repeal the Restated Bylaws without obtaining stockholder approval, and require that any amendment of the Restated Bylaws by the stockholders receive the affirmative vote of the holders of not less than 66 2/3% of the total voting power of all outstanding securities entitled to vote in the election of directors.

The foregoing description of the Restated Bylaws is qualified in its entirety by reference to the Restated Bylaws, a copy of which is filed herewith as Exhibit 3.4.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits

**Exhibit No. Description**

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| 3.1 | Amended and Restated Certificate of Incorporation of Penumbra, Inc.  |
| 3.2 | Certificate of Retirement of Series A, Series B, Series C, Series D, Series E and Series F Preferred Stock of Penumbra, Inc. |
| 3.3 | Restated Certificate of Incorporation of Penumbra, Inc.  |
| 3.4 | Amended and Restated Bylaws of Penumbra, Inc.  |

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**PENUMBRA, INC.**

Date: September 29, 2015

By: /s/ Sri Kosaraju

Name: Sri Kosaraju

Title: Chief Financial Officer and Head of Strategy

**EXHIBIT INDEX**

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