

BIOLASE TECHNOLOGY INC

Form S-3/A

November 17, 2003

[Table of Contents](#)

As filed with the Securities and Exchange Commission on November 17, 2003

Registration No. 333-106260

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# SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

**Amendment No. 5**

to

**FORM S-3**

**REGISTRATION STATEMENT**

**UNDER**

**THE SECURITIES ACT OF 1933**

**BIOLASE TECHNOLOGY, INC.**

*(Exact Name of Registrant as Specified in Its Charter)*

**Delaware**

*(State or Other Jurisdiction*

*of Incorporation or Organization)*

**87-0442441**

*(I.R.S. Employer*

*Identification Number)*

**981 Calle Amanecer**

**San Clemente, California 92673**

**(949) 361-1200**

*(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)*

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**Jeffrey W. Jones**

**President and Chief Executive Officer**

**BioLase Technology, Inc.**

**981 Calle Amanecer**

**San Clemente, California 92673**

**(949) 361-1200**

*(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent For Service)*

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**Approximate date of commencement of proposed sale to the public:** As soon as practicable after the effective date of this registration statement.

If the only securities being registered on this form are being offered pursuant to dividend or interest reinvestment plans, please check the following box. "

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, other than securities offered only in connection with dividend or interest reinvestment plans, 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 delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. "

\_\_\_\_\_

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, as amended, or until this registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

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**Table of Contents**

The information in this preliminary 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 becomes effective. This preliminary prospectus is not an offer to sell nor does it seek an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

**SUBJECT TO COMPLETION, DATED NOVEMBER 17, 2003**

**PRELIMINARY PROSPECTUS**

2,807,500 Shares

Common Stock

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We are offering 2,500,000 shares of our common stock and one of our stockholders is offering 307,500 shares of our common stock. We will not receive any proceeds from the sale of shares by the selling stockholder. Our common stock is traded on the Nasdaq National Market under the symbol BLTI. On November 6, 2003, the last reported sale price of our common stock on the Nasdaq National Market was \$13.19 per share.

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**Investing in our common stock involves risks. See Risk Factors beginning on page 5.**

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	Per Share	Total
Public Offering Price	\$	\$
Underwriting Discounts	\$	\$
Proceeds, before expenses, to BioLase Technology, Inc.	\$	\$
Proceeds, before expenses, to the selling stockholder	\$	\$

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The underwriters have the right to purchase up to 421,125 additional shares of common stock from us to cover over-allotments, if any.

The Securities and Exchange Commission and state securities regulators have not approved or disapproved of these securities or determined if this prospectus is truthful or complete. It is illegal for any person to tell you otherwise.

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Needham & Company, Inc.

William Blair & Company

Oppenheimer & Co. Inc.

The date of this prospectus is , 2003.

**Table of Contents**

**Table of Contents**

**TABLE OF CONTENTS**

	<b>Page</b>
<u>Prospectus Summary</u>	1
<u>Risk Factors</u>	5
<u>Forward-Looking Statements</u>	17
<u>Use of Proceeds</u>	17
<u>Price Range of Common Stock</u>	18
<u>Dividend Policy</u>	18
<u>Capitalization</u>	19
<u>Selected Consolidated Financial Data</u>	20
<u>Management's Discussion and Analysis of Financial Condition and Results of Operations</u>	22
<u>Business</u>	38
<u>Management</u>	53
<u>Certain Relationships and Related Transactions</u>	59
<u>Principal Stockholders</u>	60
<u>Selling Stockholder</u>	61
<u>Description of Capital Stock</u>	62
<u>Shares Eligible for Future Sale</u>	65
<u>Underwriting</u>	66
<u>Legal Matters</u>	69
<u>Experts</u>	69
<u>Where You Can Find More Information</u>	69
<u>Incorporation of Certain Documents by Reference</u>	69

You should rely only on the information contained in this prospectus. We have not, and the underwriters have not, authorized anyone to provide you with information different from that contained in this prospectus. We are not, and the underwriters are not, making an offer to sell or seeking offers to buy these securities in any jurisdiction where the offer or sale is not 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 any sale of these securities.

In this prospectus, BioLase, BLTI, we, us, our, or our company refer to BioLase Technology, Inc. and its subsidiaries and predecessors, collectively. BioLase®, Waterlase®, Millennium®, Laserbrush®, Lazersmile®, Flavorflow®, Hydrolase® and Vetlase® are our registered trademarks, and LaserSmile is our unregistered trademark. All other trademarks, servicemarks or trade names referred to in this prospectus are the property of their respective owners.

**Table of Contents**

**PROSPECTUS SUMMARY**

*This summary highlights our business and other selected information contained elsewhere in this prospectus. This summary does not contain all of the information that you should consider before making an investment decision. You should read the entire prospectus carefully, including Risk Factors, our consolidated financial statements and notes to these statements and other information incorporated by reference in this prospectus, before deciding to invest.*

**BioLase Technology, Inc.**

We are the world's leading dental laser company. We design, manufacture and market proprietary dental laser systems that allow dentists, oral surgeons and other specialists to perform a broad range of common dental procedures. Our systems provide superior performance for many types of dental procedures, with less pain and faster recovery times than are generally achieved with high-speed drills and other dental instruments. We have clearances from the U.S. Food and Drug Administration to market our laser systems in the United States. We also have approvals to sell our laser systems in Canada, the European Union and other international markets. Since 1998, we have sold more than 2,000 laser systems in over 20 countries.

Our primary product, the Waterlase system, is the best selling dental laser system. The Waterlase uses a patented combination of water and laser to precisely cut hard tissue, such as bone and teeth, and soft tissue, such as gums. We also offer the LaserSmile system, which uses a laser to perform soft tissue and cosmetic procedures, including tooth whitening. In May 2003, we acquired the American Dental Laser product line of American Medical Technologies, Inc., including the Diolase and Pulsemaster systems, which can be used for common soft tissue procedures. These systems, together with our Waterlase and LaserSmile, offer a broad product line with a range of features and price points. We also manufacture and sell accessories and disposables for our laser systems, such as handpieces, laser tips and tooth whitening gel.

According to the American Dental Association, there are over 160,000 practicing dentists in the United States. The World Federation of Dentistry, an international dental organization, estimates that there are at least 700,000 dentists worldwide. Although the use of lasers in dentistry is growing, only a small percentage of dentists currently use lasers. We believe this represents a significant opportunity for us to increase the sales of our laser systems worldwide.

Traditional dental instruments, such as high speed drills used on hard tissue, and scalpels, scissors and other cutting instruments used on soft tissue, cause discomfort, require anesthesia and result in unintended trauma to dental structure. Alternatives to traditional instruments in most cases are not suitable for performing a wide range of hard and soft tissue procedures. We believe these limitations create a significant opportunity for our laser systems, which can often perform common hard and soft tissue dental procedures more effectively and comfortably.

Our goal is to establish our laser systems as essential tools in dentistry for most common dental procedures. Our systems complement traditional tools, such as dental drills, which perform functions our systems do not address, such as cutting metal fillings and certain polishing and grinding functions. While our systems are more expensive than competing instruments, we believe that the superior performance of our systems, and the potential return on investment our systems offer practitioners, will enable us to increase our leading market position.





## **Table of Contents**

### **The BioLase Solution**

We have developed our laser systems for the dental market to perform many common hard and soft tissue dental procedures, such as cavity preparations, root canals and cutting and reshaping gums. We believe our laser systems are positioned to become the preferred instruments for many dental procedures.

Our laser systems benefit practitioners by:

reducing the need for anesthesia, which can decrease the time required for each procedure;

allowing general dentists to perform more complex surgical and cosmetic procedures that they may have previously referred to specialists or simply not performed;

improving patient retention and increasing the demand for elective procedures; and

reducing trauma, swelling and general discomfort.

Our laser systems benefit patients by:

improving comfort and reducing trauma for many common procedures;

eliminating or reducing the need for anesthesia in many cases, and the associated pain of injections and numbness;

enabling multiple procedures to be performed in one visit; and

making many elective procedures more comfortable and convenient.

### **Business Strategy**

Our objectives are to increase our leadership position and expand our penetration in the dental laser market. Our strategy consists of the following key elements:

increasing awareness of our laser systems among dental practitioners and patients;

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expanding our sales and distribution capabilities in the United States and abroad;

expanding our products and applications in dentistry;

continuing to provide high quality manufacturing and customer service; and

strengthening and defending our technology leadership in the dental laser market.

### **Key Strengths**

We believe we can strengthen our leading position in the dental laser market because of the following advantages over our competitors:

our Waterlase is the only commercially available dental laser that uses water and a unique crystal laser optimized for dental applications;

our Waterlase system is the best selling dental laser system;

we have established relationships with leading dental practitioners and academic leaders worldwide who help us increase awareness of our systems among dental professionals; and

we have a strong patent portfolio covering a broad range of dental technologies.

### **Additional Information**

We are a Delaware corporation. Our principal executive office is at 981 Calle Amanecer, San Clemente, California 92673, and our telephone number is (949) 361-1200. Our corporate web site is [www.biolase.com](http://www.biolase.com). The information on our web site is not part of this prospectus.

**Table of Contents**

**The Offering**

Common stock offered by us	2,500,000 shares
Common stock offered by selling stockholder	307,500 shares
Common stock outstanding after the offering	24,046,652 shares
Use of proceeds	For general corporate purposes, working capital, potential repayment of debt, of which approximately \$1.8 million is currently outstanding, capital expenditures and potential acquisitions. We will not receive any proceeds from the sale of shares by the selling stockholder.
Nasdaq National Market symbol	BLTI

The number of shares of common stock outstanding after this offering is based on 21,546,652 shares outstanding as of October 31, 2003, and excludes 3,644,746 shares consisting of:

3,031,706 shares issuable upon exercise of outstanding options at a weighted average exercise price of \$4.56 per share; and

613,040 additional shares of common stock reserved for future grant or issuance under our equity incentive compensation plans.

Unless otherwise indicated, all information in this prospectus assumes no exercise by the underwriters of their over-allotment option to purchase up to 421,125 additional shares of common stock from us. Shares purchased by the underwriters to cover over-allotments, if any, will be offered for sale under this prospectus.

**Table of Contents****Summary Consolidated Financial Data**

(in thousands, except per share data)

The following tables set forth summary consolidated financial data for the periods indicated. You should read the data set forth below in conjunction with Management's Discussion and Analysis of Financial Condition and Results of Operations and our consolidated financial statements and related notes included elsewhere in this prospectus. We derived the consolidated statements of operations data for the years ended December 31, 2000, 2001 and 2002 from our audited financial statements included elsewhere in this prospectus. We derived the selected financial data with respect to the consolidated statements of operations data for the nine months ended September 30, 2002 and 2003, and with respect to the balance sheet data at September 30, 2003, from unaudited financial statements included elsewhere in this prospectus. The data set forth below reflects the recent restatement of our financial statements to account for a change in the timing of revenue recognition, as more fully explained in Management's Discussion and Analysis of Financial Condition and Results of Operation and Note 2 to the consolidated financial statements included elsewhere in this prospectus.

	Fiscal Years Ended				
	December 31,			Nine Months Ended	
	(Restated)			September 30,	
	2000	2001	2002	2002 (Restated)	2003
<b>Consolidated Statements of Operations Data:</b>					
Net sales	\$ 9,495	\$ 16,546	\$ 27,257	\$ 19,134	\$ 32,991
Cost of sales	4,816	6,938	10,485	7,569	12,386
Gross profit	4,679	9,608	16,772	11,565	20,605
Other income		79	63	47	51
Operating expenses:					
Sales and marketing	4,211	7,314	10,729	7,255	10,962
General and administrative	1,841	2,011	3,010	2,072	3,407
Engineering and development	2,288	1,520	1,684	1,148	1,662
Total operating expenses	8,340	10,845	15,423	10,475	16,031
Income (loss) from operations	(3,661)	(1,158)	1,412	1,137	4,625
Non-operating income (loss)	(94)	(123)	86	29	135
Income (loss) before cumulative effect of change in accounting principle	(3,755)	(1,281)	1,498	1,166	4,760
Cumulative effect of change in accounting principle	(34)				
Net income (loss)	\$ (3,789)	\$ (1,281)	\$ 1,498	\$ 1,166	\$ 4,760
Income (loss) per share before cumulative effect of change in accounting principle:					
Basic	\$ (0.20)	\$ (0.07)	\$ 0.08	\$ 0.06	\$ 0.23
Diluted	\$ (0.20)	\$ (0.07)	\$ 0.07	\$ 0.05	\$ 0.21
Cumulative effect of change in accounting principle per share:					
Basic	\$ 0.00	\$	\$	\$	\$
Diluted	\$ 0.00	\$	\$	\$	\$

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Net income (loss) per share:							
Basic	\$	(0.20)	\$	(0.07)	\$ 0.08	\$ 0.06	\$ 0.23
Diluted	\$	(0.20)	\$	(0.07)	\$ 0.07	\$ 0.05	\$ 0.21
Shares used in computing net income (loss) per share							
Basic		19,171		19,510	19,929	19,878	20,796
Diluted		19,171		19,510	21,303	21,288	22,813

The following table presents our consolidated balance sheet data as of September 30, 2003, which we derived from our unaudited financial statements included elsewhere in this prospectus. The as adjusted for the offering data gives effect to the sale of 2,500,000 shares of common stock by us in this offering at an assumed public offering price of \$13.19 per share, which was the last reported sales price of our common stock on November 6, 2003, and after deducting underwriting discounts and commissions, and estimated offering expenses payable by us.

	September 30, 2003	
	Actual	As Adjusted for Offering
<b>Consolidated Balance Sheet Data:</b>		
Cash and cash equivalents	\$ 6,123	\$ 35,680
Working capital	7,349	36,906
Total assets	26,315	55,872
Total debt	2,937	2,937
Stockholders' equity	15,129	44,686

**Table of Contents**

**RISK FACTORS**

*Investing in our common stock involves a high degree of risk. You should carefully consider the following risks and all the other information in this prospectus before making an investment decision about our common stock. While the risks described below are the ones we believe are most important for you to consider, these risks are not the only ones that we face. If any of the following risks actually occurs, our business, operating results or financial condition could suffer, the trading price of our common stock could decline and you could lose all or part of your investment.*

**Risks Relating to Our Business**

**Our quarterly sales and operating results may fluctuate in future periods and we may fail to meet expectations, which may cause the price of our common stock to decline.**

Our quarterly sales and operating results have fluctuated and are likely to continue to vary from quarter to quarter due to a number of factors, many of which are not within our control. If our quarterly sales or operating results fall below the expectations of investors or securities analysts, the price of our common stock could decline substantially. Factors that might cause quarterly fluctuations in our sales and operating results include the following:

variation in demand for our products, including variation due to seasonality;

our ability to research, develop, introduce, market and gain market acceptance of new products and product enhancements in a timely manner;

our ability to control costs;

the size, timing, rescheduling or cancellation of orders from distributors;

the introduction of new products by competitors;

long sales cycles and fluctuations in sales cycles;

the availability and reliability of components used to manufacture our products;

changes in our pricing policies or those of our suppliers and competitors, as well as increased price competition in general;

the mix of our domestic and international sales, and the risks and uncertainties associated with our international business;

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costs associated with any future acquisitions of technologies and businesses;

limitations on our ability to use net operating loss carryforwards under the provisions of Internal Revenue Code Section 382 and similar provisions under applicable state laws;

developments concerning the protection of our proprietary rights; and

general global economic and political conditions, including international conflicts and acts of terrorism.

The amount of expenses we incur, in part, depends on our expectations regarding future sales. In particular, we expect to continue incurring substantial expenses relating to the marketing and promotion of our products. Since many of our costs are fixed in the short term, if we have a shortfall in sales, we may be unable to reduce expenses quickly enough to avoid losses. Accordingly, you should not rely on quarter-to-quarter comparisons of our operating results as an indication of our future performance.



**Table of Contents**

**The loss of or a substantial reduction in, or change in the size or timing of, orders from distributors could harm our business.**

Our international sales are principally comprised of sales through independent distributors, although we sell products in certain European countries through direct sales representatives. A significant amount of our sales may consist of sales through distributors. Net sales to distributors accounted for approximately 17% of our total sales in 2002. No distributor accounted for more than 6% of our net sales in 2002. The loss of a substantial number of our distributors or a substantial reduction in, cancellation of or change in the size or timing of orders from our current distributors could harm our business, financial condition and results of operations. The loss of a key distributor could affect our operating results due to the potential length of time that might be required to locate and qualify a new distributor or to retain direct sales representatives for the territory. In February of 2003, we terminated our distributor in Germany for failure to satisfy its obligations under its agreement with us, including failure to meet specified sales quotas. The agreement was originally signed in 2000 and renewed in 2002. The agreement required minimum sales of \$10,000,000 over the two-year term following the renewal. The average quarterly sales generated by our distributor from the time of the renewal until we terminated the distributor were nearly 50% less than the quota provided under the distribution agreement. To replace the dis