

DYNAVAX TECHNOLOGIES CORP

Form 8-K

February 12, 2008

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 20549**

**FORM 8-K  
CURRENT REPORT  
PURSUANT TO SECTION 13 OR 15(D) OF THE  
SECURITIES AND EXCHANGE ACT OF 1934  
Date of report (Date of earliest event reported): February 12, 2008  
DYNAVAX TECHNOLOGIES CORPORATION  
(Exact name of registrant as specified in charter)**

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

**000-50577**  
(Commission File Number)

**33-0728374**  
(I.R.S. Employer Identification No.)

**2929 Seventh Street, Suite 100  
Berkeley, California 94710**

(Address of principal executive offices and zip code)  
Registrant's telephone number, including area code: **(510) 848-5100**

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:

- 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))
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Item 5.02. Departure of Directors or Certain Officers; Elections of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers  
SIGNATURES

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**Table of Contents****Item 5.02. Departure of Directors or Certain Officers; Elections of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers****(e) Compensation Arrangements of Certain Officers***2007 Bonuses, 2008 Base Salaries and 2008 Stock Option Awards*

On January 30, 2008, the Board of Directors of Dynavax Technologies Corporation, or Dynavax, determined and approved the 2007 bonus, 2008 base salary, and 2008 stock option award for Dino Dina, the President and Chief Executive Officer of Dynavax.

On February 3, 2008, the Compensation Committee of the Board of Directors of Dynavax determined and approved 2007 bonuses, 2008 base salaries, and 2008 stock option awards for each of Dynavax's named executive officers other than its President and Chief Executive Officer and the and Chief Executive Officer of Dynavax Europe.

The Compensation Committee of the Board of Directors annually evaluates the performance, and determines the compensation of Dynavax's officers, and the Board of Directors evaluates the President and Chief Executive Officer, based on the Compensation Committee's and Board of Director's assessment of the individual's performance, corporate performance and relative compensation for competitive positions in similar-sized, publicly-traded biopharmaceutical companies. The 2007 bonuses, 2008 base salaries, and 2008 stock option awards approved by the Board of Directors and Compensation Committee for Dynavax's executive officers are as set forth below:

<b>Name and Title</b>	<b>2007 Bonus</b>	<b>2008 Base Salary</b>	<b>2008 Stock Option Award</b>
Dino Dina, M.D. President and Chief Executive Officer	\$ 180,000	\$ 408,000	100,000 <sup>(1)</sup>
Robert L. Coffman, Ph.D. Vice President and Chief Scientific Officer	\$ 103,626	\$ 281,112	75,000 <sup>(2)</sup>
Zbigniew Janowicz, Ph.D. Chief Executive Officer, Dynavax Europe	\$ 88,369 <sup>(3)</sup>	\$ 362,720 <sup>(3)</sup>	25,000 <sup>(4)</sup>
Michael S. Ostrach Vice President, Chief Business Officer and General Counsel	\$ 105,600	\$ 307,000	40,000 <sup>(2)</sup>
Deborah A. Smeltzer Vice President, Operations and Chief Financial Officer	\$ 108,900	\$ 308,550	40,000 <sup>(2)</sup>

(1) Exercise price per share of \$6.12, for the options granted to Dr. Dina, representing the closing price on the date of grant which is January 30, 2008. All options will vest in annual installments through the fourth

anniversary of the date of grant, subject to the individual's continuous service with the Company through each applicable vesting date.

- (2) Exercise price per share of \$5.31 for the options granted to the other executive officers. The date of grant, February 3, 2008, is a non-trading day; therefore, the exercise price is based on the closing price of the next trading day. All options will vest in annual installments through the fourth anniversary of the date of grant, subject to the individual's continuous service with the Company through each applicable vesting date.
- (3) The 2007 bonus of \$59,640 and 2008 base salary of \$244,800 for the Chief Executive Officer of

Dynavax Europe were converted using the daily average interbank Euro to USD rate on the date of approval by the Chief Executive Officer pursuant to delegated authority, February 5, 2008, of 1.4817.

- (4) Exercise price per share of \$5.25 for options granted to Dr. Janowicz, representing the closing price on the date of grant by the Chief Executive Officer pursuant to delegated authority, on February 11, 2008. All options will vest in annual installments through the fourth anniversary of the date of grant, subject to the individual's continuous service with the Company through each applicable vesting date.

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**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.

**Dynavax Technologies Corporation**

Dated: February 12, 2008

By: /s/ Deborah A. Smeltzer  
Deborah A. Smeltzer  
Vice President, Operations and Chief  
Financial Officer

th="1%">

1,326,608

\$

1.48

Exercised

-

-

-

Cancelled

(250

)

2.80

-

-

Outstanding at end

of year

2,841,607

\$

1.47

1,326,608

\$

1.48

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Options exercisable

at year-end

1,114,755

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Weighted-average



fair value of

options granted

during the year

\$ 0.63

\$ 1.48

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<sup>1</sup>The member equity units issued during the year ended December 31, 2002 have been converted to common shares as of the Merger date (See Note 1(B)) based upon a conversion factor of .752374 per membership unit.



CHIRAL QUEST, INC. AND SUBSIDIARY  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
DECEMBER 31, 2003 AND 2002

The following table summarizes the information about Plan stock options outstanding at December 31, 2003:

EXERCISE PRICE	NUMBER OUTSTANDING	REMAINING CONTRACTURAL LIFE (YEARS)	NUMBER OF OPTIONS EXERCISABLE
\$ 1.25	100,000	5.81	100,000
\$ 1.25	550,000	4.13	550,000
\$ 1.25	25,000	5.81	25,000
\$ 1.49	865,230	4.12	252,356
\$ 1.49	650,052	4.49	88,028
\$ 1.50	20,000	4.35	2,667
\$ 1.50	25,000	9.49	4,167
\$ 1.50	10,000	9.46	1,083
\$ 1.50	50,000	9.31	7,083
\$ 1.50	97,500	9.29	26,563
\$ 1.50	5,000	4.49	5,000
\$ 1.50	20,000	9.29	2,833
\$ 1.50	60,000	9.49	10,000
\$ 1.50	20,000	9.46	2,167
\$ 1.60	4,500	3.06	4,500
\$ 1.67	175,000	9.77	14,583
\$ 1.67	15,000	9.77	1,250
\$ 1.70	50,000	9.57	6,944
\$ 1.79	10,000	9.92	167
\$ 1.79	2,000	9.92	63
\$ 1.96	12,900	9.83	717
\$ 1.96	12,900	9.83	717
\$ 1.96	4,300	9.83	2,457
\$ 1.96	12,900	9.83	717
\$ 1.96	12,900	9.83	717
\$ 1.96	12,900	9.83	717
\$ 1.96	12,900	9.83	717
\$ 2.05	2,500	0.33	417
\$ 3.20	250	2.62	250
\$ 3.20	375	2.62	375
\$ 3.20	250	2.62	250
\$ 6.80	1,625	1.42	1,625
\$ 6.80	375	1.42	375
\$ 11.20	250	0.00	250
	<u>2,841,607</u>		<u>1,114,755</u>

**NOTE 7 AGREEMENTS**

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Pursuant to a January 2002 agreement between the Company and a pharmaceutical product development customer, the Company granted the customer a worldwide, non-exclusive, royalty free license to certain of the Company's Intellectual Property Rights for research purposes only in connection with certain of the customer's compounds. The customer paid the Company a nonrefundable license fee of \$400,000 in 2002. The fee is being amortized to revenue through September 2005 when the agreement terminates. For the years ended December 31, 2003 and 2002, the Company has recognized income of \$114,241 and \$112,676, respectively, related to this agreement.

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CHIRAL QUEST, INC. AND SUBSIDIARY  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
DECEMBER 31, 2003 AND 2002

In August 2002, the Company entered into a one-year scientific research agreement with another pharmaceutical product development customer to assist in the completion of a feasibility screening program and report. In consideration for the experimental activity, the customer paid a fee of \$30,000. The fee has been amortized to revenue through August 2003. For the years ended December 31, 2003 and 2002, the Company recognized income of \$19,726 and \$10,274, respectively.

In May 2003, the Company entered into a four-year consulting agreement with the CTO at an annual rate of \$120,000 per year. In addition, the CTO received an option to purchase 650,052 shares of common stock at \$1.49 per share as mentioned in Note 5.

In May 2003, the Company entered into an option agreement with the Science and Technology Bureau of Jiashan County in Zhejiang, Province of the People's Republic of China, China ( Jiashan ), whereby the Company has an option to acquire a laboratory facility in an industrial park near Shanghai. Jiashan is currently building 4,000 square meters of laboratory space to the Company's specifications. The Company will not pay rent for the initial 3 years of the lease, following which the Company, at its sole option, may rent the space for annual rent of no more than \$60,000. In addition, the Company will have the option to purchase the lab on commercially reasonable terms. Should the Company wish to occupy the laboratory after its estimated completion in the third quarter of 2004; it will begin to pay a maintenance fee of \$4,500 per month. For purposes of entering into the lease, the Company established a wholly owned subsidiary in Hong Kong, Chiral Quest Ltd., which in turn will be the sole shareholder of a subsidiary in the People's Republic of China (the China Sub ). The Company intends to provide at least \$65,000 of capital to the China Sub by the end of the second quarter of 2004. In addition, the Company was also granted the option to purchase for \$750,000 approximately 33 acres of land adjacent to the industrial park where the lab will be established.

Pursuant to an October 2002 agreement with Penn State, the Company funded the services of four post-doctorate fellows who, under the supervision of the CTO, conducted research and provided research quantities of chiral ligands to the Company. The agreement expires on April 14, 2004. The approximate obligation payable by the Company through April 14, 2004 is approximately \$96,000. This amount consists principally of four post-doctorate salaries, fringe benefits, materials and supplies for the stated period.

**NOTE 8 BUSINESS AND CREDIT CONCENTRATIONS**

The Company had two customers which accounted for approximately 54% and 17%, respectively, of revenue for the year ended December 31, 2003. The Company had two customers who accounted for approximately 58% and 14%, respectively, of revenue for the year ended December 31, 2002.

The Company had two customers who accounted for approximately 52% and 39%, respectively, of net customer accounts receivable as of December 31, 2003. The Company had two customers who accounted for approximately 80% and 10%, respectively, of net accounts receivable as of December 31, 2002.

**NOTE 9 COMMITMENTS AND CONTINGENCIES**

Upon completion of the merger transaction between Surg II, Inc. and Chiral Quest, LLC on February 18, 2003, Alan D. Roth, Ph.D. was appointed President, Chief Executive Officer and Chief Financial Officer of the Company. Dr. Alan Roth's employment with the Company is governed by the terms of an Employment Agreement dated November 5, 2002, which the Company assumed following the merger. Dr. Roth's employment agreement was subsequently amended as of October 1, 2003. Dr. Roth's employment agreement provides for a term of 3 years at an annual salary of \$205,000 during the first year and \$240,000 thereafter. In addition, Dr. Roth was entitled to, and received, a bonus of \$35,000 following completion of the Surg II Chiral Quest, LLC merger and he is entitled to annual discretionary bonuses, as the Board of Directors may determine. In October 2003, the employment agreement was amended to provide for additional bonus payments, as follows: (i) \$3,500 upon such time as we execute a commercial contract providing for gross revenue to us in excess of \$50,000, which bonus has been paid to Dr. Roth; (ii) a one time bonus of approximately \$160,000 upon such time as the closing bid price of our common stock is at or above \$5.00 for five consecutive trading days; and (iii) a one time bonus of approximately \$160,000 upon such time as the closing bid price of our common stock is at or above \$8.00 for five consecutive trading days. If not already paid to Dr. Roth, the bonuses described in clauses (ii) and (iii) are payable in the event of a Change of Control (as defined in the agreement), provided that the per share price at which the change of control was effected was at or above the price milestones referenced in such clauses.

CHIRAL QUEST, INC. AND SUBSIDIARY  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
DECEMBER 31, 2003 AND 2002

Pursuant to the terms of his employment agreement, Dr. Roth also received a ten-year option to purchase an aggregate of 865,260 shares of the Company's common stock at an exercise price of \$1.49 per share. The options vest in three equal annual installments commencing February 18, 2004, and each anniversary thereafter until fully vested.

In the event Dr. Roth's employment with the Company is terminated for cause (as defined in the agreement), he is not entitled to any severance or other compensation beyond the date of such discharge. In the event Dr. Roth's employment is terminated as a result of a change of control (as defined in the agreement) in which the Company's shareholders receive aggregate consideration of at least \$50 million, then Dr. Roth is entitled to receive his base salary for a period of one year and all of his unvested options shall vest immediately and be exercisable for a period of 180 days thereafter.

In May 2003, the Company entered into an agreement to lease laboratory and office space located in Monmouth Junction, New Jersey. The lease commenced effective June 1, 2003 and is for a three-year term with a total rent, utilities and maintenance fees of approximately \$468,000 to be paid in monthly installments that increase each year. Due to the escalation clause in the lease, the Company is straight-lining the expense of the lease over the term of the lease. The Company also issued the landlord options to purchase 20,000 shares of common stock, as described in Note 6. The options issued to the landlord are amortized over the term of the option agreement and included in rent expense. The future minimum lease payments under this lease are as follows: \$136,730 for 2004, \$148,550 for 2005, and \$62,750 for 2006.

Total rent expense (which includes base rent, utilities, and operating escalations for both the New Jersey and Pennsylvania locations) for the Company for the year ended December 31, 2003 was approximately \$70,000. This amount reflects cost allocations to work in process, finished goods and cost of sales of approximately \$31,000.

The State College, Pennsylvania office maintains laboratory space for a yearly renewable lease at a monthly expense of approximately \$1,300. Total rent expense for the years ended December 31, 2003 and 2002 for the State College, Pennsylvania office was approximately \$15,000 each year.

Paramount BioCapital, LLC provides an office and general and administrative services in New York, New York for the Company's president and chief executive officer for an approximate monthly fee of \$4,000. This arrangement is renewable upon a yearly basis.

CHIRAL QUEST, INC. AND SUBSIDIARY  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
DECEMBER 31, 2003 AND 2002

In July 2002, the Company received a cease and desist letter from a competitor apprising the Company of the existence of a U.S. Patent. In October 2002, the Company and such competitor entered into a mutual confidentiality agreement in which each party agreed to exchange technology information in order to more fully evaluate whether either is infringing upon the rights of the other.

Also, in October 2002, the Company received an additional patent notification letter from another competitor apprising them of the existence of another U.S. Patent. To the Company's knowledge, no legal proceedings have been initiated with respect to any of the matters discussed in such letters.

**NOTE 10 RELATED PARTY TRANSACTIONS**

Paramount BioCapital Investments, LLC, a related party, has been performing certain administrative functions for the Company since July 12, 2002, and financed the Company through loans for working capital evidenced by a series of promissory notes (the Notes) aggregating \$376,625. The Notes bore interest at 5% and were repaid including interest in full on February 28, 2003, and subsequently cancelled.

Additionally, since September 1, 2002, the Company has been paying \$4,000 per month to Paramount BioCapital Investments, LLC, for administrative services. For the years ended December 31, 2003 and 2002, this resulted in charges to operations of \$48,000 and \$16,000, respectively. As of December 31, 2003, the Company owed \$1,201 to Paramount BioCapital Investments, LLC.

On February 25, 2004, the Company completed the sale of its securities in a private placement to accredited investors for gross proceeds of approximately \$7.2 million. Paramount BioCapital, Inc. participated as one of three placement agents for this transaction, for which it received approximately \$300,000 in commissions.

**NOTE 11 SUBSEQUENT EVENTS**

On February 25, 2004, the Company completed the sale of its securities in a private placement to accredited investors for gross proceeds of approximately \$7.2 million. Investors in the private placement purchased an aggregate of approximately 4.8 million shares of Chiral Quest's common stock at a price per share of \$1.50. Additionally, investors received 5-year warrants to purchase one share of common stock at \$1.65 per share for every two common shares purchased in the offering. ThinkEquity Partners LLC, Paramount BioCapital, Inc. and Casimir Capital L.P. acted as the placement agents for this offering and received fees of approximately \$500,000 of which Paramount BioCapital, Inc., a related party, received \$300,000. Net proceeds to the Company, after deducting commissions and other expenses relating to the private placement, were approximately \$6.7 million.

In February 2004, the Company amended the lease agreement in Monmouth Junction, NJ for additional laboratory space effective April 1, 2004. This additional laboratory space of 1,200 square footage increases rent expense for the year ending December 31, 2004 by approximately \$21,000, and annual rent expense thereafter of approximately \$28,000.

**Exhibit Index**

<u>Exhibit No.</u>	<u>Description</u>
2.1	Merger Agreement dated November 12, 2002, by and among the Registrant, CQ Acquisition, Inc. and Chiral Quest, LLC (incorporated by reference to Exhibit 2.1 to the Registrant's Form 8-K filed November 27, 2002).
3.1	Articles of Incorporation, as amended to date.
3.2	Bylaws, as amended to date.
4.1	Common Stock Purchase Warrant dated as of February 18, 2003 issued to Key West Associates, LLC (incorporated by reference to Exhibit 4.1 to the Registrant's Form 10-QSB for the period ended March 31, 2003).
4.2	Option Agreement No. LL-1 dated May 6, 2003 issued to Princeton Corporate Plaza, LLC. (incorporated by reference to Exhibit 4.1 to the Registrant's Form 10-QSB for the period ended June 30, 2003).
4.3	Form of Option Agreement dated May 6, 2003 issued to Princeton Corporate Plaza, LLC (incorporated by reference to Exhibit 4.2 to the Registrant's Form 10-QSB for the period ended June 30, 2003).
4.4	Schedule of Options substantially identical to Exhibit 4.3 (incorporated by reference to Exhibit 4.3 to the Registrant's Form 10-QSB for the period ended June 30, 2003).
10.1	Employment Agreement dated November 8, 2002 between the Registrant and Alan D. Roth (incorporated by reference to Exhibit 10.1 to the Registrant's Form 10-QSB for the period ended March 31, 2003).
10.2	License Agreement dated on or about October 27, 2000, as amended, between Chiral Quest, LLC and The Penn State Research Foundation (incorporated by reference to Exhibit 10.2 to the Registrant's Form 10-QSB for the period ended March 31, 2003).
10.3	Consulting Agreement dated May 15, 2003 between the Registrant and Xumu Zhang, Ph.D. (incorporated by reference to Exhibit 10.1 to the Registrant's Form 10-QSB for the period ended June 30, 2003).
10.4	2003 Stock Option Plan.
10.5	Supplement to Employment Agreement dated October 1, 2003 between the Registrant and Alan D. Roth.
16.1	Letter regarding change in independent accountants (incorporated by reference to Exhibit 16.1 to the Registrant's Form 8-K/A filed January 5, 2004).
16.2	Letter regarding change in independent accountants (incorporated by reference to Exhibit 16.1 to the Registrant's Form 8-K filed April 25, 2003).
31.1	Certification of Chief Executive Officer and Chief Financial Officer.
32.1	Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.