

PUMATECH INC
Form S-8
December 06, 2002

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

FORM S-8

**REGISTRATION STATEMENT
UNDER THE SECURITIES ACT OF 1933**

PUMATECH, INC.

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

77-0349154
(I.R.S. Employer
Identification No.)

**2550 North First Street
Suite 500
San Jose, CA 95131**
(Address of Principal Executive Offices)

1998 Employee Stock Purchase Plan
(Full title of the plan)

J. Keith Kitchen
Vice President of Finance and Administration and Secretary
Pumatech, Inc.
**2550 North First Street
Suite 500
San Jose, California 95131**
(Name and address of agent for service)

(408) 321-7650
(Telephone number, including area code, of agent for service)

Copy to:
Elias J. Blawie
Venture Law Group
A Professional Corporation
2775 Sand Hill Road
Menlo Park, California 94025
(650) 854-4488

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered(1)	Proposed maximum offering price per share	Proposed maximum aggregate offering price	Amount of registration fee
1998 Employee Stock Purchase Plan Common Stock, \$.001 par value	500,000 Shares	\$0.96(2)	\$478,125	\$43.99

- (1) This registration statement shall also cover any additional shares of common stock which become issuable under any of the plans being registered pursuant to this registration statement by reason of any stock dividend, stock split, recapitalization or any other similar transaction effected without the receipt of consideration which results in an increase in the number of the registrant's outstanding shares of common stock.
- (2) Estimated in accordance with Rule 457(h) under the Securities Act of 1933 (the Securities Act) solely for the purpose of calculating the registration fee. The computation is based upon the average of the high and low sale prices of the common stock as reported on the Nasdaq National Market on December 5, 2002, multiplied by 85%, which is the percentage of the trading purchase price applicable to purchases under the Plan.
-

PART II
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed with the Securities and Exchange Commission (the Commission) are hereby incorporated by reference:

- (a) The registrant's Annual Report on Form 10-K for the fiscal year ended July 31, 2002 filed pursuant to Section 13(a) of the Securities Exchange Act of 1934 (the Exchange Act), which contains audited financial statements for the registrant's latest fiscal year for which such statements have been filed.
- (b) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the Annual Report referred to in (a) above.
- (c) The description of the registrant's common stock contained in the registrant's Registration Statement on Form 8-A filed with the Commission under Section 12 of the Exchange Act on November 8, 1996, including any amendment or report filed for the purpose of updating such description.

All documents subsequently filed by the registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be part hereof from the date of filing such documents.

Item 4. Description of Securities. Not applicable.

Item 5. Interests of Named Experts and Counsel. Not applicable.

Item 6. Indemnification of Directors and Officers.

The registrant's Certificate of Incorporation reduces the liability of a director to the corporation or its stockholders for monetary damages for breaches of his or her fiduciary duty of care to the fullest extent permissible under Delaware law. The Bylaws of the registrant further provide for indemnification of corporate agents to the maximum extent permitted by the Delaware General Corporation Law. In addition, the registrant has entered into Indemnification Agreements with its officers and directors.

Item 7. Exemption from Registration Claimed. Not applicable.

Item 8. Exhibits.

**Exhibit
Number**

- 5.1 Opinion of Venture Law Group, a Professional Corporation (see p.7).
- 23.1 Consent of Venture Law Group, a Professional Corporation (included in Exhibit 5.1).
- 23.2 Consent of Independent Accountants (see p.8).
- 24.1 Powers of Attorney (see p.5).

Item 9. Undertakings.

The undersigned registrant hereby undertakes:

- (1) to file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.
- (2) that, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.
- (3) to remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

[Signature Pages Follow]

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Woodson Hobbs and J. Keith Kitchen, jointly and severally, his or her attorneys-in-fact and agents, each with the power of substitution and resubstitution, for him or her and in his or her name, place or stead, in any and all capacities, to sign any amendments to this Registration Statement on Form S-8, and to file such amendments, together with exhibits and other documents in connection therewith, with the Securities and Exchange Commission, granting to each attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully as he or she might or could do in person, and ratifying and confirming all that the attorneys-in-fact and agents, or his or her substitute or substitutes, may do or cause to be done by virtue hereof.

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

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ WOODSON HOBBS</u> Woodson Hobbs	President, Chief Executive Officer and Director (Principal Executive Officer)	December 6, 2002
<u>/s/ J. KEITH KITCHEN</u> J. Keith Kitchen	Vice President of Finance and Administration and Secretary (Principal Financial and Accounting Officer)	December 6, 2002
<u>/s/ MICHAEL M. CLAIR</u> Michael M. Clair	Chairman of the Board	December 6, 2002
<u>/s/ KIRSTEN BERG-PAINTER</u> Kirsten Berg-Painter	Director	December 6, 2002
<u>/s/ MICHAEL PRAISNER</u> Michael Praisner	Director	December 6, 2002

INDEX TO EXHIBITS

Exhibit Number		Page No.
5.1	Opinion of Venture Law Group, a Professional Corporation	7
23.1	Consent of Venture Law Group, a Professional Corporation (included in Exhibit 5.1)	7
23.2	Consent of Independent Accountants	8
24.1	Powers of Attorney	5