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

FORM S-8
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

INNOVIVA, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

94-3265960
(I.R.S. Employer Identification No.)

1350 Old Bayshore Highway, Suite 400
Burlingame, California
(Address of Principal Executive Offices)

94010
(Zip Code)

Innoviva, Inc. 2023 Employee Stock Purchase Plan
(Full title of the plan)

Pavel Raifeld
Chief Executive Officer
Innoviva, Inc.
1350 Old Bayshore Highway, Suite 400
Burlingame, California 94010
(Name and address of agent for service)

(650) 238-9600
(Telephone number, including area code, of agent for service)

Copies to:
Jared Fertman
Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, New York 10019
(212) 728-8000

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer
Non-accelerated filer

Accelerated filer
Smaller reporting company
Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

EXPLANATORY NOTE

This registration statement on Form S-8 (this “Registration Statement”) is filed by Innoviva, Inc. (the “Company” or “Registrant”) to register 2,500,000 shares of Common Stock, par value \$0.01 per share, of the Registrant (“Common Stock”), which may be issued under the Innoviva, Inc. 2023 Employee Stock Purchase Plan (the “2023 ESPP”). The 2023 ESPP was adopted by the Company’s board of directors on April 27, 2023 and approved by the Company’s stockholders on May 22, 2023.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The documents containing the information specified in Part I of this Registration Statement have been or will be sent or given to participating employees as specified in Rule 428(b)(1) of the Securities Act of 1933, as amended (the “Securities Act”), in accordance with the rules and regulations of the United States Securities and Exchange Commission (the “Commission”). Such documents are not being filed with the Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 of the Securities Act. These documents and the documents incorporated by reference into this Registration Statement pursuant to Item 3 of Part II of this Registration Statement, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents, filed with the Commission by the Company, are incorporated by reference into this Registration Statement:

- (a) the Company’s [Annual Report on Form 10-K for the fiscal year ended December 31, 2022, filed on February 28, 2023 \(as amended on March 20, 2023\)](#);
- (b) the Company’s Quarterly Reports on Form 10-Q for the fiscal quarters ended March 31, 2023, June 30, 2023 and September 30, 2023, filed on [May 9, 2023](#), [August 2, 2023](#) and [November 1, 2023](#), respectively;
- (c) the Company’s Current Reports on Form 8-K, filed on [January 4, 2023](#), [May 1, 2023](#), [May 24, 2023](#), [July 11, 2023](#), [August 7, 2023](#) and [August 25, 2023](#) (other than the portion thereof which is “furnished” and not “filed” in accordance with the rules of the Commission); and
- (d) the description of the Company’s Common Stock, which is contained in [Exhibit 4.9](#) to the Company’s Annual Report on Form 10-K filed on February 19, 2020, under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), together with any amendment or report filed with the Commission for the purpose of updating this description.

In addition, all documents filed by the Company with the Commission pursuant to Sections 13(a), 13(c), 14, and 15(d) of the Exchange Act, subsequent to the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement which indicates that all of the securities offered hereby have been sold or which deregisters all securities then remaining unsold shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of the filing of such documents with the Commission; provided, however, that documents or portions thereof which are “furnished” and not “filed” in accordance with the rules of the Commission shall not be deemed incorporated by reference into this Registration Statement unless the Registrant expressly provides to the contrary that such document is incorporated by reference into this Registration Statement.

Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein (or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein) modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed to constitute a part of this Registration Statement except as so modified or superseded.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law authorizes a court to award or a corporation's board of directors to grant indemnification to directors and officers in terms sufficiently broad to permit such indemnification under certain circumstances for liabilities (including reimbursement for expenses incurred) arising under the Securities Act of 1933, as amended (the "1933 Act"). The Registrant's bylaws provide for mandatory indemnification of its directors and officers and those serving at the Registrant's request as directors, officers, employees or agents of other organizations to the maximum extent permitted by the Delaware General Corporation Law. The Registrant's amended and restated certificate of incorporation provides that, pursuant to Delaware law, its directors shall not be liable for monetary damages for breach of the directors' fiduciary duty as directors to the Registrant and its stockholders. This provision in the amended and restated certificate of incorporation does not eliminate the directors' fiduciary duty, and in appropriate circumstances equitable remedies such as injunctive or other forms of non-monetary relief will remain available under Delaware law. In addition, each director will continue to be subject to liability for breach of the director's duty of loyalty to the Registrant for acts or omissions not in good faith or involving intentional misconduct or knowing violations of law, for actions leading to improper personal benefit to the director, and for payment of dividends or approval of stock repurchases or redemptions that are unlawful under Delaware law. The provision also does not affect a director's responsibilities under any other law, such as the federal securities laws or state or federal environmental laws. The Registrant has entered into indemnification agreements with its officers and directors. The indemnification agreements provide the Registrant's officers and directors with further indemnification to the maximum extent permitted by the Delaware General Corporation Law. The Registrant maintains liability insurance for its directors and officers.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

The following exhibits are filed herewith or are incorporated herein by reference.

Exhibit Number	Description	Incorporated by Reference			Filed Herewith
		Form	Exhibit	Filing Date/Period End Date	
4.1	Amended and Restated Certificate of Incorporation	8-K	99.2	April 28, 2016	
4.2	Amended and Restated Bylaws, amended and restated as of January 1, 2023	8-K	3.1	January 4, 2023	
4.3	Specimen certificate representing the common stock of the registrant	10-K	4.1	December 31, 2006	
4.4	Indenture, dated as of January 4, 2013 by and between Theravance, Inc. and the Bank of New York Mellon Trust Company, N.A., as trustee	8-K	4.1	January 25, 2013	
4.5	Form of 2.125% Convertible Subordinated Note Due 2023 (included in Exhibit 4.4)	8-K	4.2	January 25, 2013	
4.6	Indenture (including form of Note) with respect to Innoviva's 2.5% Convertible Senior Notes due 2025, dated as of August 7, 2017, between Innoviva and The Bank of New York Mellon Trust Company, N.A., as trustee	8-K	4.1	August 7, 2017	
4.7	Description of Registrant's Securities Registered Pursuant to Section 12 of the Securities Exchange Act of 1934	10-K	4.9	February 19, 2020	
4.8	Indenture (including form of Note) with respect to Innoviva's 2.125% Convertible Senior Notes due 2028, dated as of March 7, 2022, between Innoviva and The Bank of New York Mellon Trust Company, N.A., as trustee	8-K	4.1	March 8, 2022	
5.1	Opinion and Consent of Willkie Farr & Gallagher LLP				X
23.1	Consent of Deloitte & Touche LLP, Independent Registered Public Accounting Firm				X
23.2	Consent of Grant Thornton LLP, Independent Registered Public Accounting Firm				X
23.3	Consent of Ernst & Young, LLP, Independent Registered Public Accounting Firm of Armata Pharmaceuticals, Inc.				X
24.1	Power of Attorney (included on the signature page of this Registration Statement)				X
99.1	Innoviva, Inc. 2023 Employee Stock Purchase Plan	DEF 14A	Appendix A	April 28, 2023	
107*	Filing Fee Table				X

Item 9. Undertakings.

(a) 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:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

- (ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement;
- (iii) 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;

Provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Company pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the Registration Statement.

- (2) That, for the purpose of determining any liability under the Securities Act, 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.
- (b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) 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.
- (c) Insofar as indemnification for liabilities arising under the Securities Act 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 Commission such indemnification is against public policy as expressed in the Securities 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 Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Burlingame, State of California on November 13, 2023.

Innoviva, Inc.

By: /s/ Pavel Raifeld
Pavel Raifeld
Chief Executive Officer

SIGNATURES AND POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Pavel Raifeld, as their true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for such person and in his or her name, place and stead, in any and all capacities, to sign any and all amendments to this Registration Statement, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Commission, granting unto said 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 to all intents and purposes as he or she could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his substitutes, may lawfully do or cause to be done by virtue hereof.

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

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Pavel Raifeld</u> Pavel Raifeld	Chief Executive Officer (Principal Executive Officer)	November 13, 2023
<u>/s/ Stephen Basso</u> Stephen Basso	Chief Financial Officer (Principal Financial Officer)	November 13, 2023
<u>/s/ Marianne Zhen</u> Marianne Zhen	Chief Accounting Officer (Principal Accounting Officer)	November 13, 2023
<u>/s/ Odysseas Kostas, M.D.</u> Odysseas Kostas, M.D.	Director	November 13, 2023
<u>/s/ Mark DiPaolo, Esq.</u> Mark DiPaolo, Esq.	Director	November 13, 2023
<u>/s/ Jules Haimovitz</u> Jules Haimovitz	Director	November 13, 2023
<u>/s/ Sarah Schlesinger, M.D.</u> Sarah Schlesinger, M.D.	Director	November 13, 2023
<u>/s/ Sapna Srivastava, Ph.D.</u> Sapna Srivastava, Ph.D.	Director	November 13, 2023

WILLKIE FARR & GALLAGHER LLP
787 Seventh Avenue
New York, NY 10019-6099

November 13, 2023

Innoviva, Inc.
1350 Old Bayshore Highway, Suite 400
Burlingame, California 94010

Re: Registration Statement on Form S-8

Ladies and Gentlemen:

We have acted as counsel to Innoviva, Inc., a Delaware corporation (the “Company”), with respect to the Company’s Registration Statement on Form S-8 (the “Registration Statement”) to be filed by the Company with the Securities and Exchange Commission on or about the date hereof. The Registration Statement relates to the registration under the Securities Act of 1933, as amended (the “Act”), by the Company of 2,500,000 shares of Common Stock, par value \$0.01 per share, of the Company (the “Common Stock”), which may be issued under the Innoviva, Inc. 2023 Employee Stock Purchase Plan (the “2023 ESPP”).

We have examined, among other things, originals and/or copies (certified or otherwise identified to our satisfaction) of such documents, papers, statutes, and authorities as we have deemed necessary to form a basis for the opinion hereinafter expressed. In our examination, we have assumed the genuineness of all signatures and the conformity to original documents of all copies submitted to us. As to various questions of fact material to our opinion, we have relied on statements and certificates of officers and representatives of the Company.

Based on the foregoing, we are of the opinion that, when the Registration Statement becomes effective under the Act, the Common Stock to be issued by the Company under the 2023 ESPP, when duly issued and delivered pursuant to the terms of the 2023 ESPP, will be legally issued, fully paid, and non-assessable.

This opinion is limited to the General Corporation Law of the State of Delaware, and we express no opinion with respect to the laws of any other jurisdiction or any other laws of the State of Delaware.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act.

Very truly yours,

/s/ Willkie Farr & Gallagher LLP

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement on Form S-8 of our reports dated February 28, 2023, relating to the financial statements of Innoviva, Inc. and the effectiveness of Innoviva, Inc.'s internal control over financial reporting appearing in the Annual Report on Form 10-K of Innoviva, Inc. for the year ended December 31, 2022.

/s/ Deloitte & Touche LLP

San Jose, California
November 13, 2023

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We have issued our report dated February 22, 2022 with respect to the consolidated financial statements of Innoviva, Inc. included in the Annual Report on Form 10-K for the year ended December 31, 2022, which is incorporated by reference in this Registration Statement. We consent to the incorporation by reference of the aforementioned report in this Registration Statement.

GRANT THORNTON LLP

San Francisco, California
November 13, 2023

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the Innoviva, Inc. 2023 Employee Stock Purchase Plan of our report dated March 16, 2023, with respect to the consolidated financial statements of Armata Pharmaceuticals, Inc., included in the Annual Report (Form 10-K/A) of Innoviva, Inc. for the year ended December 31, 2022, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

San Diego, California
November 13, 2023

Calculation of Filing Fee Table

Form S-8
(Form Type)

INNOVIVA, INC.
(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered Securities.

Security Type	Security Class Title	Fee Calculation Rule	Amount to be registered⁽¹⁾	Proposed maximum offering price per share⁽²⁾	Proposed maximum aggregate offering price⁽²⁾	Fee Rate	Amount of registration fee
Equity	Common Stock, par value \$0.01 per share	457(a)	2,500,000 ⁽³⁾	\$11.60	\$28,995,625.00	0.00014760	\$4,279.75
Total Offering Amounts					\$28,995,625.00		\$4,279.75
Total Fee Offsets							\$0.00
Net Fees Due							\$4,279.75

- (1) Pursuant to Rule 416(c) under the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement also registers an indeterminable number of additional shares of Common Stock, par value \$0.01 per share (“Common Stock”), of Innoviva, Inc., as may hereafter be offered or issued under the Innoviva, Inc. 2023 Employee Stock Purchase Plan (the “2023 ESPP”), in each case, to prevent dilution resulting from any future stock splits, stock dividends or similar adjustments of the outstanding Common Stock.
- (2) Estimated solely for purposes of calculating the amount of the registration fee pursuant to Rule 457(h) and Rule 457(c) of the Securities Act, the proposed maximum aggregate offering price per share and proposed maximum aggregate offering price is based on 85% of the average of the high and low prices per share of Common Stock as reported on the Nasdaq Capital Market on November 7, 2023. Pursuant to the 2023 ESPP, the purchase price of the shares of Common Stock thereunder will not be less than an amount equal to the lesser of (i) 85% of the fair market value of the shares of Common Stock on the applicable purchase date and (ii) 85% of the fair market value of the shares of Common Stock on the last trading day before the commencement of the applicable offering period.
- (3) Represents shares of Common Stock reserved for future issuance pursuant to the 2023 ESPP as of the date of this Registration Statement.

Table 2: Fee Offset Claims and Sources

Not applicable.