

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

**POST-EFFECTIVE  
AMENDMENT NO. 1  
TO  
FORM S-1  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933**

**VICAL INCORPORATED**

(Exact name of registrant as specified in its charter)

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

**2836**  
(Primary Standard Industrial  
Classification Code Number)

**93-0948554**  
(I.R.S. Employer  
Identification Number)

**10390 Pacific Center Court  
San Diego, California 92121  
(858) 646-1100**  
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

**Vijay B. Samant  
President and Chief Executive Officer  
Vical Incorporated  
10390 Pacific Center Court  
San Diego, California 92121  
(858) 646-1100**  
(Name, address, including zip code, and telephone number, including area code, of agent for service)

*Copies to:*

**Frederick T. Muto, Esq.  
Sean M. Clayton, Esq.  
Cooley LLP  
4401 Eastgate Mall  
San Diego, California 92121  
(858) 550-6000**

**Matthew T. Bush, Esq.  
Latham & Watkins LLP  
12670 High Bluff Drive  
San Diego, California 92130  
(858) 523-5400**

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

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, as amended (the "Securities Act"), 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 this Form is a post-effective amendment filed pursuant to Rule 462(d) 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.  (File No. 333-220981)

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, anon-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

Accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company)

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 to Section 7(a)(2)(B) of the Securities Act.

**This post-effective amendment shall become effective upon filing with the Securities and Exchange Commission in accordance with Rule 462(d) under the Securities Act of 1933, as amended.**

---

---

---

**Explanatory Note**

This Post-Effective Amendment No. 1 (this "Amendment") relates to the Registrant's Registration Statement on Form S-1 (File No. 333-220981), as amended, declared effective on November 7, 2017 by the Securities and Exchange Commission. The Registrant is filing this Amendment for the sole purpose of replacing Exhibit 5.1 to the Registration Statement. This Amendment does not modify any provision of Part I or Part II of the Registration Statement other than Item 16(a) of Part II as set forth below.

**PART II  
INFORMATION NOT REQUIRED IN PROSPECTUS**

**Item 16. Exhibits and financial statement schedules.**

*(a) Exhibits.*

See Exhibit Index immediately preceding the signature page.

## EXHIBIT INDEX

<u>Exhibit Number</u>	<u>Description of Document</u>
1.1†	<a href="#">Form of Underwriting Agreement.</a>
3.1(i)(1)	Restated Certificate of Incorporation. (P)
3.2(ii)(2)	<a href="#">Amended and Restated Bylaws of the Company.</a>
3.3(i)(2)	<a href="#">Certificate of Amendment to Restated Certificate of Incorporation.</a>
3.4(i)(3)	<a href="#">Certificate of Amendment to Restated Certificate of Incorporation.</a>
3.5(i)(4)	<a href="#">Certificate of Amendment to Restated Certificate of Incorporation.</a>
3.6(i)(5)	<a href="#">Certificate of Amendment to Restated Certificate of Incorporation.</a>
4.1(1)	Specimen Common Stock Certificate. (P)
4.2†	<a href="#">Form of Pre-Funded Warrant.</a>
5.1	<a href="#">Opinion of Cooley LLP.</a>
10.1(6)+	<a href="#">Amended and Restated Stock Incentive Plan of Vical Incorporated.</a>
10.2(7)+	<a href="#">Form of Indemnity Agreement between the Company and its directors and officers.</a>
10.3(8)+	<a href="#">Vical Incorporated Non-Employee Director Compensation Policy.</a>
10.4(9)+	<a href="#">Form of Delayed Issuance Stock Purchase Election Agreement, as amended, under the Amended and Restated Stock Incentive Plan (with deferral election).</a>
10.5(10)+	<a href="#">Form of Delayed Issuance Stock Purchase Election Agreement, as amended, under the Amended and Restated Stock Incentive Plan.</a>
10.6(11)+	<a href="#">Restated employment letter dated January 9, 2009, between the Company and Vijay B. Samant.</a>
10.7(12)+	<a href="#">Employment Agreement dated January 14, 2005, between the Company and Anthony A. Ramos.</a>
10.8(13)+	<a href="#">Severance Agreement dated January 23, 2015, between the Company and Anthony A. Ramos.</a>
10.9(14)+	<a href="#">Employment Agreement dated August 25, 2003, between the Company and Larry Smith.</a>
10.10(15)+	<a href="#">Severance Agreement dated January 23, 2015, between the Company and Larry Smith.</a>
10.11(16)*	<a href="#">U.S. License Agreement dated July 12, 2011, between the Company and Astellas Pharma Inc.</a>
10.12(17)*	<a href="#">Ex-U.S. License Agreement dated July 12, 2011, between the Company and Astellas Pharma Inc.</a>
10.13(18)*	<a href="#">Supply and Services Agreement dated July 12, 2011, between the Company and Astellas Pharma Inc.</a>
10.14(19)	<a href="#">Letter agreement dated July 12, 2011, related to the U.S. License Agreement dated July 12, 2011, between the Company and Astellas Pharma Inc.</a>
10.15(20)*	<a href="#">1st Amendment dated August 6, 2012, to U.S. License Agreement Between Vical Incorporated and Astellas Pharma Inc.</a>

- 10.16(21)\* [1st Amendment dated August 6, 2012, to Ex-U.S. License Agreement Between Vical Incorporated and Astellas Pharma Inc.](#)
- 10.17(22)\* [1st Amendment dated August 6, 2012, to Supply and Services Agreement Between Vical Incorporated and Astellas Pharma Inc.](#)
- 10.18(23)\* [License Agreement dated March 24, 2015, between the Company and Astellas Pharma Inc.](#)
- 10.19(24)\* [Amendment No. 1 dated August 31, 2015, to License Agreement dated March 25, 2015, between the Company and Astellas Pharma Inc.](#)
- 10.20(25)\* [License Agreement dated December 7, 2001, between the Company and CytRx Corporation.](#)
- 10.21(26) [Letter Agreement dated July 5, 2011, related to the License Agreement dated December 7, 2001, between the Company and CytRx Corporation.](#)
- 10.24(27) [Lease dated January 30, 2002, between the Company and Kilroy Realty, L.P. a Delaware Limited Partnership.](#)
- 10.25(28) [First Amendment dated July 15, 2016, to Lease dated January 30, 2002, between the Company and Kilroy Realty, L.P. a Delaware Limited Partnership.](#)
- 10.26(29) [Stock Purchase Agreement dated August 1, 2016, between the Company and AnGes MG, Inc.](#)
- 10.27(30) [At-the-Market Issuance Sales Agreement, dated October 13, 2016, by and between the Company and IFS Securities, Inc. \(doing business as BP, a division of IFS Securities, Inc.\).](#)
- 23.1† [Consent of Independent Registered Public Accounting Firm.](#)
- 23.2 [Consent of Cooley LLP \(reference is made to Exhibit 5.1\).](#)
- 24.1† [Powers of Attorney.](#)

---

+ Indicates management contract or compensatory plan

\* The Registrant has obtained confidential treatment with respect to certain portions of this exhibit

† Previously filed

(P) Paper exhibit

(1) Incorporated by reference to the exhibit of the same number filed with the Company's Registration Statement on FormS-3 (No. 33-95812) filed on August 15, 1995.

(2) Incorporated by reference to the exhibit of the same number filed with the Company's Quarterly Report on Form10-Q for the quarter ended June 30, 2010.

(3) Incorporated by reference to Exhibit 4.2 to the Company's Registration Statement on FormS-8 (No. 333-135266) filed on June 23, 2006.

(4) Incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form8-K filed on May 25, 2016.

(5) Incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form8-K filed on June 1, 2017.

- 
- (6) Incorporated by reference to Exhibit 99.1 to the Company's Current Report on Form 8-K filed on June 1, 2017.
  - (7) Incorporated by reference to Exhibit 10.3 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2002.
  - (8) Incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2014.
  - (9) Incorporated by reference to Exhibit 10.58 to the Company's Annual Report on Form 10-K for the year ended December 31, 2009.
  - (10) Incorporated by reference to Exhibit 10.59 to the Company's Annual Report on Form 10-K for the year ended December 31, 2009.
  - (11) Incorporated by reference to Exhibit 99.1 to the Company's Current Report on Form 8-K filed on January 15, 2009.
  - (12) Incorporated by reference to Exhibit 10.7 to the Company's Annual Report on Form 10-K for the year ended December 31, 2013.
  - (13) Incorporated by reference to Exhibit 10.8 to the Company's Annual Report on Form 10-K for the year ended December 31, 2014.
  - (14) Incorporated by reference to Exhibit 10.11 to the Company's Annual Report on Form 10-K for the year ended December 31, 2013.
  - (15) Incorporated by reference to Exhibit 10.12 to the Company's Annual Report on Form 10-K for the year ended December 31, 2014.
  - (16) Incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2011.
  - (17) Incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2011.
  - (18) Incorporated by reference to Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2011.
  - (19) Incorporated by reference to Exhibit 99.4 to the Company's Current Report on Form 8-K filed on January 5, 2012.
  - (20) Incorporated by reference to Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2012.
  - (21) Incorporated by reference to Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2012.
  - (22) Incorporated by reference to Exhibit 10.5 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2012.
  - (23) Incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2015.
  - (24) Incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2015.
  - (25) Incorporated by reference to Exhibit 99 to CytRx Corporation's Current Report on Form 8-K filed on December 21, 2001.
  - (26) Incorporated by reference to Exhibit 99.2 to the Company's Current Report on Form 8-K filed on January 5, 2012.
  - (27) Incorporated by reference to Exhibit 10.27 to the Company's Annual Report on Form 10-K for the year ended December 31, 2001.

- 
- (28) Incorporated by reference to the Exhibit 10.1 to the Company's Quarterly Report on Form10-Q for the quarter ended June 30, 2016.
  - (29) Incorporated by reference to the Exhibit 10.2 to the Company's Quarterly Report on Form10-Q for the quarter ended June 30, 2016.
  - (30) Incorporated by reference to Exhibit 99.1 to the Company's Current Report on Form8-K filed on October 17, 2016.

**SIGNATURES**

Pursuant to the requirements of the Securities Act, the Registrant has duly caused this post-effective amendment no. 1 to registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Diego, California, on the 8<sup>th</sup> day of November, 2017.

Vical Incorporated

By: /s/ Vijay B. Samant  
Vijay B. Samant  
*President and Chief Executive Officer*

Pursuant to the requirements of the Securities Act, 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/ Vijay B. Samant</u> Vijay B. Samant	President, Chief Executive Officer and Director <i>(Principal Executive Officer)</i>	November 8, 2017
<u>/s/ Anthony A. Ramos</u> Anthony A. Ramos	Vice President, Chief Financial Officer <i>(Principal Financial and Accounting Officer)</i>	November 8, 2017
<u>/s/ R. Gordon Douglas, M.D.*</u> R. Gordon Douglas, M.D.	Chairman of the Board of Directors	November 8, 2017
<u>/s/ Richard M. Beleson*</u> Richard M. Beleson	Director	November 8, 2017
<u>/s/ Gary A. Lyons*</u> Gary A. Lyons	Director	November 8, 2017
<u>/s/ Robert C. Merton, Ph.D.*</u> Robert C. Merton, Ph.D.	Director	November 8, 2017
<u>/s/ George J. Morrow*</u> George J. Morrow	Director	November 8, 2017
<u>/s/ Thomas E. Shenk, Ph.D.*</u> Thomas E. Shenk, Ph.D.	Director	November 8, 2017

\* Pursuant to power of attorney

By: /s/ Vijay B. Samant  
Vijay B. Samant





Sean M. Clayton  
+1 858 550 6034  
sclayton@cooley.com

November 8, 2017

Vical Incorporated  
10390 Pacific Center Court  
San Diego, CA 92121

Ladies and Gentlemen:

You have requested our opinion, as counsel to Vical Incorporated, a Delaware corporation (the "**Company**"), in connection with the filing by the Company, pursuant to Rule 462(d) of Regulation C promulgated under the Securities Act of 1933, as amended, of a Post-Effective Amendment No. 1 to a Registration Statement (No. 333-220981) on Form S-1 (the "**Registration Statement**") with the Securities and Exchange Commission, including a related prospectus filed with the Registration Statement (the "**Prospectus**"), covering an underwritten public offering of up to 7,837,142 shares of the Company's common stock, par value \$0.01 (the "**Shares**") and warrants (the "**Warrants**") to purchase up to 6,028,571 shares of the Company's common stock (the "**Warrant Shares**"), including up to 2,142,857 Shares that may be sold pursuant to the exercise of an option to purchase additional securities. All of the Shares and the Warrants are to be sold by the Company as described in the Registration Statement and the Prospectus. The Registration Statement was declared effective on November 7, 2017.

In connection with this opinion, we have (i) examined and relied upon the Registration Statement and Prospectus, the form of Warrant filed as an exhibit to the Registration Statement, the Company's Amended and Restated Certificate of Incorporation, its Amended and Restated Bylaws and the originals or copies certified to our satisfaction of such records, documents, certificates, memoranda and other instruments as in our judgment are necessary or appropriate to enable us to render the opinion expressed below and (ii) assumed the Pricing Committee of the Board of Directors of the Company has taken action to set the sale price of the Shares and the Warrants.

We have assumed the genuineness and authenticity of all documents submitted to us as originals and the conformity to originals of all documents submitted to us as copies. As to certain factual matters, we have relied upon a certificate of an officer of the Company and have not sought independently to verify such matters.

Our opinion is expressed only with respect to the General Corporation Law of the State of Delaware and, as to the Warrants constituting valid and binding obligations of the Company, with respect to the laws of the State of New York. Our opinion is based on these laws as in effect on the date hereof. We express no opinion to the extent that any other laws are applicable to the subject matter hereof and express no opinion and provide no assurance as to compliance with any federal or state securities law, rule or regulation. With regard to our opinion concerning the Warrants constituting valid and binding obligations of the Company:

(i) Our opinion is subject to, and may be limited by, (a) applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent conveyance, debtor and creditor, and similar laws which relate to or affect creditors' rights generally, and (b) general principles of equity (including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing) regardless of whether considered in a proceeding in equity or at law.

Cooley LLP 4401 Eastgate Mall San Diego, CA 92121  
t: (858) 550-6000 f: (858) 550-6420 cooley.com



Vical Incorporated  
November 8, 2017  
Page Two

(ii) Our opinion is subject to the qualification that the availability of specific performance, an injunction or other equitable remedies is subject to the discretion of the court before which the request is brought.

(iii) We express no opinion as to any provision of the Warrants that: (a) provides for liquidated damages, buy-in damages, monetary penalties, prepayment or make-whole payments or other economic remedies to the extent such provisions may constitute unlawful penalties, (b) relates to advance waivers of claims, defenses, rights granted by law, or notice, opportunity for hearing, evidentiary requirements, statutes of limitations, trial by jury, or procedural rights, (c) restricts non-written modifications and waivers, (d) provides for the payment of legal and other professional fees where such payment is contrary to law or public policy, (e) relates to exclusivity, election or accumulation of rights or remedies, or (f) provides that provisions of the Warrants are severable to the extent an essential part of the agreed exchange is determined to be invalid and unenforceable.

(iv) We express no opinion as to whether a state court outside of the State of New York or a federal court of the United States would give effect to the choice of New York law provided for in the Warrants.

With respect to the Warrant Shares, we express no opinion to the extent that, notwithstanding its current reservation of shares of Common Stock, future issuances of securities, including the Warrant Shares, of the Company and/or adjustments to outstanding securities, including the Warrants, of the Company may cause the Warrants to be exercisable for more shares of Common Stock than the number that remain authorized but unissued. Further, we have assumed the Exercise Price (as defined in the Warrants) will not be adjusted to an amount below the par value per share of the Common Stock.

On the basis of the foregoing, and in reliance thereon, we are of the opinion that (i) the Shares, when sold and issued in accordance with the Registration Statement and the Prospectus, will be validly issued, fully paid and non-assessable, (ii) provided that the Warrants have been duly executed and delivered by the Company and duly delivered to the purchasers thereof against payment therefor, the Warrants, when sold and issued as contemplated in the Registration Statement and the Prospectus will be valid and binding obligations of the Company, and (iii) the Warrant Shares, when issued and paid for in accordance with the terms of the Warrants, will be validly issued, fully paid and non-assessable.

We consent to the reference to our firm under the caption "Legal Matters" in the Prospectus and to the filing of this opinion as an exhibit to the Registration Statement.

Sincerely,

Cooley LLP

By: /s/ Sean M. Clayton  
Sean M. Clayton

Cooley LLP 4401 Eastgate Mall San Diego, CA 92121  
t: (858) 550-6000 f: (858) 550-6420 cooley.com