

KEY TECHNOLOGY INC  
Form S-3  
December 22, 2004

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As filed with the Securities and Exchange Commission on December 21, 2004

Registration No. 333-

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

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**FORM S-3  
REGISTRATION STATEMENT  
UNDER THE SECURITIES ACT OF 1933**

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**KEY TECHNOLOGY, INC.**

(Exact name of registrant as specified in its charter)

**Oregon**  
(State or jurisdiction of  
incorporation or  
organization)

**93-0822509**  
(I.R.S. Employer  
Identification No.)

**150 Avery Street, Walla Walla, Washington 99362**  
**(509) 529-2161**

(Address, including zip code, and telephone number, including area  
code, of registrant's principal executive offices)

**Kirk W. Morton**  
**Chief Executive Officer**  
**Key Technology, Inc.**  
**150 Avery Street, Walla Walla, Washington 99362**  
**(509) 529-2161**

(Name, address, including zip code, and telephone number, including  
area code, of agent for service)

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**Copies to:**

Ronald L. Greenman  
Thomas P. Palmer  
**Tonkon Torp LLP**  
888 SW Fifth Avenue, Suite 1600  
Portland, Oregon 97204-2099  
Tel: (503) 221-1440

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Approximate date of commencement of proposed sale to the public:  
From time to time after this Registration Statement becomes effective.

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.

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**CALCULATION OF REGISTRATION FEE**

Title of Each Class of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price Per Share(2)	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, \$0.01 par value per share, issuable upon exercise of merger warrants	31,549	\$15.00	\$473,235.00	\$55.70
<b>Total:</b>			<b>\$473,235.00</b>	<b>\$55.70</b>

(1) This Registration Statement also covers such indeterminate number of additional shares as may become issuable pursuant to Rule 416 promulgated under the Securities Act of 1933, as amended, as a result of anti-dilution adjustments.

(2) The offering price of \$ 15.00 per share is the price at which the warrants registered on this Registration Statement may be exercised.

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**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 or until the registration statement shall become effective on such date as the Commission, acting in accordance with Section 8(a), may determine.**

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**The information in this prospectus is not complete and may be changed. These securities may not be sold until the related registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.**

**SUBJECT TO COMPLETION, dated December 21, 2004**

**PRELIMINARY PROSPECTUS**

KEY TECHNOLOGY, INC.

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31,549 SHARES OF COMMON STOCK

This prospectus relates to the sale of up to 31,549 shares of Key Technology, Inc. common stock that we may issue upon exercise of common stock purchase warrants issued to Advanced Machine Vision Corporation shareholders in connection with our acquisition of Advanced Machine Vision Corporation. The common stock purchase warrants are five-year warrants exercisable to purchase one share of our common stock at an exercise price of \$15.00 per share. The expiration date of the warrants is July 11, 2005. The warrants are redeemable by the holder upon demand for \$10.00 for each share of common stock the holder may purchase under the merger warrant. As of December 10, 2004, there were 31,549 common stock purchase warrants outstanding. We expect to receive gross proceeds of \$473,235 if all common stock purchase warrants are exercised.

Our common stock is quoted on the Nasdaq National Market System under the symbol "KTEC." On December 17, 2004, the last reported sale price of our common stock, as reported by the Nasdaq National Market, was \$8.99.

Our principal executive offices are located at 150 Avery Street, Walla Walla, Washington 99362.

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**Our securities involve a high degree of risk. See "Risk Factors" beginning on page 2.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.**

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The date of this Prospectus is \_\_\_\_\_, 200\_\_.

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## PROSPECTUS SUMMARY

*The following summary highlights selected information from this prospectus and may not contain all of the information that is important to you. Before making an investment decision, you should read carefully the entire document, including the "Risk Factors" section, and the information incorporated by reference.*

*References to "we," "us," "Key," or the "Company" mean Key Technology, Inc. and its operating subsidiaries, unless otherwise indicated.*

### **Key Technology**

We are a worldwide supplier of process automation solutions to the food processing industry and other industries such as tobacco, plastics and pharmaceuticals. We design, manufacture, sell and service process automation systems that process product streams of discrete pieces to improve safety and quality. These systems integrate electro-optical automated inspection and sorting systems with process systems which include specialized conveying and preparation systems. The Company provides parts and service for each of its product lines to customers throughout the world.

Our customers use these systems to process a wide variety of products including fruits, vegetables, potatoes, snacks, cereals, nuts, meat, tobacco, recycled plastics, and wood chips. The systems are able to inspect these products for subtle flaws in color, size and other stringent criteria. Our systems are also being utilized to inspect grains, dry beans, fresh-cut produce, coffee, and pharmaceuticals. Our technology systems allow processors to improve quality, increase yield and reduce cost.

We are headquartered in Walla Walla, Washington and have additional manufacturing facilities in Oregon and the Netherlands. Regional sales and service offices are located in Australia, the Netherlands and Walla Walla. In addition, our systems are sold through a worldwide network of sales representatives.

Our principal executive office is located at 150 Avery Street, Walla Walla, Washington 99362. Our telephone number is (509) 529-2161. Our website is located at [www.key.net](http://www.key.net). Information contained on our website or any other website does not constitute a part of this prospectus.

### **This Offering**

Securities Offered	This prospectus pertains to the registration of 31,549 shares of our common stock issuable upon exercise of warrants issued by us to Advanced Machine Vision shareholders in connection with the acquisition of Advanced Machine Vision in 2000. The merger warrants have an exercise price of \$15.00 per share. The merger warrants expire on July 11, 2005. The merger warrants are redeemable by the holder upon demand for \$10.00 for each share of common stock the holder may purchase under the merger warrant. The common stock purchase warrants issued to former Advanced Machine Vision shareholders are referred to as the "merger warrants." We will pay the expenses of registering the common stock.
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Use of Proceeds	Holders of our merger warrants are not obligated to exercise any of their warrants. If the holders of our merger warrants decide to exercise all of their warrants, we may receive gross proceeds of up to \$473,235, which we intend to use for working capital purposes.
Trading Markets	Our common stock is traded on the Nasdaq National Market under the symbol "KTEC." The merger warrants are traded on the over-the-counter market known as the "pink sheets" under the symbol "KTECW.PK."
Dividend Policy	We have not historically paid dividends on our common stock, and do not intend to in the future. See "Dividend Policy."
Risk Factors	Investment in our securities involves a high degree of risk. See "Risk Factors."

## RISK FACTORS

*Before you invest in our securities, you should be aware that there are various risks, including those described below, that may affect our business, financial condition and results of operations. This list of risk factors may be supplemented by future filings. Any of the following risks could materially adversely affect our business, financial condition or results of operations. In such case, you may lose all or part of your investment.*

### **Adverse economic conditions in the food processing industry may adversely affect the Company's revenues.**

The markets the Company serves, particularly the food processing industry, are experiencing variable economic conditions. In general, the food processing industry is not growing and is experiencing consolidation. Additionally, changing consumer dietary preferences, most notably in the potato market, have resulted in reduced or deferred capital equipment purchases for the Company's product lines supplying the potato processing industry. While the Company has reacted to these developments with applications directed to the growing fresh vegetable and fruit industries, continued loss of business in the potato industry will have a negative effect on the Company's sales and net earnings.

### **Competition and advances in technology may adversely affect sales and prices.**

The markets for the Company's products are highly competitive. Advances in technology may remove some barriers to market entry, enabling additional competitors to enter the Company's markets. Such additional competition could force the Company to reduce prices to remain competitive, and decrease the Company's profits, having a material adverse affect on the Company's business and financial condition. Important competitive factors in the Company's markets include price, performance, reliability, customer support and service. There can be no assurance that the Company will be able to continue to compete effectively in the future.



**The Company's new products may not compete successfully in either existing or new markets.**

The future success and growth of the Company is dependent upon its ability to develop, market, and sell products and services in certain food processing markets as well as to introduce new products into other existing and potential markets. There can be no assurance the Company can successfully penetrate these potential markets or expand into new international markets with its current or new products.

**The limited availability and possible cost fluctuations of materials used in the Company's products could adversely affect the Company's business.**

Certain of the components, subassemblies and materials for the Company's products are obtained from single sources or a limited group of suppliers. Although the Company seeks to reduce dependence on sole or limited source suppliers, the partial or complete loss of certain of these sources could have an adverse effect on the Company's results of operations and customer relationships. In addition, certain basic materials, such as stainless steel, are used extensively in the Company's product fabrication processes. Such basic materials may also be subject to worldwide shortages or price fluctuations related to the supply of or demand for raw materials, such as nickel, which are used in their production by the Company's suppliers. A significant increase in the price or decrease in the availability of one or more of these components, subassemblies or basic materials could also adversely affect the Company's results of operations. Although protected somewhat by supply contracts, the high price of stainless steel worldwide in fiscal 2004 resulted in higher component costs and reduced margins on certain product lines.

**The Company's inability to protect its intellectual property may adversely affect the Company's competitive advantage.**

The Company's competitive position may be affected by its ability to protect its proprietary technology. The Company has obtained certain patents and has filed a number of patent applications. The Company also anticipates filing applications for protection of its future products and technology. There can be no assurance that any such patents will provide meaningful protection for the Company's product innovations, or that the issuance of a patent will give the Company any material advantage over its competition in connection with any of its products. The Company may experience additional intellectual property risks in international markets where it may lack patent protection. The patent laws of other countries may differ from those of the U.S. as to the patentability of the Company's products and processes. Moreover, the degree of protection afforded by foreign patents may be different from that of U.S. patents.

**Intellectual property-related litigation expenses and other costs resulting from infringement claims asserted against the Company or its customers by third parties may adversely affect the Company's results of operations and its customer relations.**

The technologies used by the Company may infringe the patents or proprietary technology of others. In the past, the Company has been required to initiate litigation to protect its patents. The Company has experienced a direct infringement of its intellectual property rights in China and is presently working with the Chinese patent officials in an effort to protect the intellectual property rights regarding its tobacco sorter technology in that country. The cost of enforcing the Company's patent rights in lawsuits that it may bring against infringers or of defending itself against infringement charges by other patent holders or other third parties, including customers, may be high and could have an adverse effect on the Company's results of operations and its customer relations.

Certain users of the Company's products have received notice of patent infringement from the Lemelson Medical, Education and Research Foundation, Limited Partnership (the Partnership) alleging that their use of the Company's products may infringe certain patents transferred to the Partnership by the late Jerome H. Lemelson. Certain of these users have notified the Company that, in the event it is subsequently determined that their use of the Company's products infringes any of the Partnership's patents, they may seek indemnification from the Company for damages or expenses resulting from this matter. The Company does not believe its products infringe any valid and enforceable claims of the Partnership's patents. Furthermore, the Partnership has stated that it is not the Company's products that infringe the Partnership's patents, but rather the use of those products by the Company's customers. The Company cannot predict the outcome of this matter nor any related litigation or other costs related to mitigation activities that may arise in the future, the effect of such litigation or mitigation activities on the financial results of the Company, or the effect upon its customer relations.

### **FORWARD-LOOKING STATEMENTS**

From time to time, we, through our management, may make forward-looking public statements with respect to the Company regarding, among other things, expected future revenues or earnings, projections, plans, future performance, product development and commercialization, and other estimates relating to our future operations. Forward-looking statements may be included in reports filed under the Securities Exchange Act of 1934, as amended, in press releases or in oral statements made with the approval of one of our authorized executive officers. The words or phrases "will likely result," "are expected to," "intends," "is anticipated," "estimates," "believes," "projects" or similar expressions are used to identify forward-looking statements within the meaning of Section 21E of the Exchange Act and Section 27A of the Securities Act of 1933, as amended, as enacted by the Private Securities Litigation Reform Act of 1995.

Such forward-looking statements reflect our current views and are subject to a number of risks and uncertainties. We caution investors not to place undue reliance on our forward-looking statements, which speak only as to the date on which they are made. Our actual results may materially differ from those described in the forward-looking statements as a result of various factors, including those listed above. We disclaim any obligation subsequently to revise or update forward-looking statements to reflect events or circumstances after the date of such statements or to reflect the occurrence of anticipated or unanticipated events.

### **INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE**

This prospectus is part of a Registration Statement on Form S-3 that we have filed with the SEC. The SEC allows us to "incorporate by reference" information that we file with it. This means that we can disclose important information to you by referring you to other documents that we have filed with the SEC. The information that is incorporated by reference is considered part of this prospectus, and the information that we file later will automatically update and may supersede this information. For further information about us and the securities being offered, you should refer to the Registration Statement on Form S-3 and the following documents or portions of documents that are incorporated by reference:

- (i) Our Annual Report on Form 10-K for the fiscal year ended September 30, 2004.

- (ii) The description of our common stock contained in our Registration Statement on Form 8-A filed with the Commission on May 24, 1993 by which our common stock was registered under Section 12 of the Exchange Act, and the description of common stock incorporated therein by reference to the Registration Statement on Form S-1 (Registration No. 333-6194) filed with the Commission on May 24, 1993, as amended by Amendment No. 1 filed with the Commission on July 2, 1993 and Amendment No. 2 filed with the Commission on July 13, 1993 and declared effective on July 15, 1993, under the caption "Description of Capital Stock" therein.
- (iii) Our definitive proxy statement dated January 8, 2004 for our annual meeting of shareholders held on February 4, 2004.
- (iv) All documents we file pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act after the date of this prospectus and prior to the filing of a post-effective amendment that indicates that all the securities offered hereby have been sold or that deregisters all the securities remaining unsold.

You may request a copy of all documents that are incorporated by reference in this prospectus by writing or telephoning us at the following address and number: Key Technology, Inc., Attention: Secretary, 150 Avery Street, Walla Walla, Washington 99362; telephone number (509) 529-2161. We will provide copies of all documents requested without charge (not including the exhibits to those documents, unless the exhibits are specifically incorporated by reference into those documents or this prospectus).

#### **USE OF PROCEEDS**

Holders of our merger warrants are not obligated to exercise any of their warrants. If the holders of our merger warrants decide to exercise all of their warrants, we may receive gross proceeds of up to \$473,235, which we intend to use for working capital purposes.

#### **PLAN OF DISTRIBUTION**

The common stock is being offered by us to the holders of the merger warrants in connection with the exercise of the merger warrants.

#### **DIVIDEND POLICY**

We have not historically paid dividends on our common or preferred stock. Our board of directors does not anticipate payment of any dividends in the foreseeable future and intends to continue its present policy of retaining earnings for reinvestment in our operations. Our credit facility restricts the payment of dividends on any class of our capital stock, other than dividends payable in our stock, or the redemption of any of our outstanding Series B convertible preferred shares and merger warrants, without the prior written consent of the bank.



## INTERESTS OF NAMED EXPERTS AND COUNSEL

A member of Tonkon Torp LLP, counsel named in this prospectus as passing upon the validity of the securities, is an Assistant Secretary of the Company and owns 17,000 shares of our common stock.

## COMMISSION POSITION ON INDEMNIFICATION FOR SECURITIES ACT LIABILITIES

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to our directors, officers and controlling persons, we have been informed 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.

## LEGAL MATTERS

The validity of the securities offered hereby will be passed by Tonkon Torp LLP, Portland, Oregon.

## EXPERTS

The financial statements incorporated in this prospectus by reference from the Company's Annual Report on Form 10-K for the year ended September 30, 2004 have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their report (which report expresses an unqualified opinion and includes an explanatory paragraph referring to the adoption of the provisions of Emerging Issues Task Force Issue No. 03-06, *Participating Securities and the Two-Class Method under FASB Statement 128*, and Statement of Financial Accounting Standards No. 142, *Goodwill and Other Intangible Assets*) which is incorporated herein by reference and has been so incorporated in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

## WHERE YOU CAN FIND MORE INFORMATION

We are subject to the information requirements of the Securities Exchange Act of 1934. In accordance with the Securities Exchange Act, we file annual, quarterly and current reports, proxy statements and other information with the Securities and Exchange Commission. You may inspect and copy any document we file with the SEC at the SEC's public reference room in Washington, D.C. at 450 Fifth Street, N.W., Washington, D.C. 20549. You may obtain information on the operation of the SEC's public reference room by calling (800) SEC-0330. You may also purchase copies of our SEC filings by writing to the SEC, Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Our SEC filings are also available on the SEC's website at <http://www.sec.gov>. You may also find additional information about us at our website at <http://www.key.net>. Information contained on our website or any other website does not constitute a part of this prospectus.

We have not authorized any person to give any information or to make any representations in connection with the sale of the securities by us other than those contained in this prospectus. You should not rely on any information or representations in connection with such sales other than the information or representations in this prospectus. You should not assume that there has been no change in our affairs since the date of this prospectus or that the information contained in this prospectus is correct as of any time after its date. This prospectus is

not an offer to sell or a solicitation of an offer to buy securities in any circumstances in which such offer or solicitation is unlawful.

**PART II**  
**INFORMATION NOT REQUIRED IN PROSPECTUS**

**Item 14. Other Expenses of Issuance and Distribution**

The expenses in connection with the issuance and distribution of the securities being registered shall be borne by us and are estimated as follows:

SEC Filing Fee	\$ 55.70
Legal Fees and Expenses	\$ 7,500.00
Accounting Fees and Expenses	\$ 5,500.00
Miscellaneous	\$ 700.00
<i>Total</i>	<i>\$ 13,755.70</i>

**Item 15. Indemnification of Directors and Officers**

The Oregon Business Corporation Act (the "Act") authorizes the indemnification of an officer or director made party to a proceeding because the officer or director is or was an officer or director against liability (including amounts paid in settlement) incurred in the proceeding and against expenses with respect to the proceeding (including attorney fees) if: (a) the conduct of the officer or director was in good faith, (b) the officer or director reasonably believed that his conduct was in the best interests of the corporation or at least not opposed to its best interests, (c) in the case of a criminal proceeding, the officer or director had no reasonable cause to believe his conduct was unlawful, (d) in the case of any proceeding by or in the right of the corporation, unless a court otherwise determines, if such officer or director shall not have been adjudged liable, and (e) in connection with any other proceeding charging improper personal benefit to the director or officer, unless a court otherwise determines, in which the director or officer was not adjudged liable on the basis that personal benefit was improperly received by the director or officer. Our Restated Articles of Incorporation, as amended, and Restated Bylaws, as amended, allow us to indemnify officers and directors to the fullest extent permissible by law.

The Act further provides that the articles of incorporation of a corporation may provide that no director shall be personally liable to a corporation or its shareholders for monetary damages for conduct as a director, except that such provision does not eliminate the liability of a director (i) for any breach of the directors' duty of loyalty to the corporation or its shareholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law, (iii) for any unlawful distribution as defined under the Act, or (iv) for any transaction from which the director derived an improper personal benefit. Our Restated Articles of Incorporation, as amended, provide that, to the fullest extent permissible by law, no director shall be personally liable to us or its shareholders for monetary damages.

We have entered into indemnification agreements with each director and certain officers that indemnify them to the full extent authorized or permitted by the Act.

We have purchased directors' and officers' liability insurance. Subject to conditions, limitations and exclusions in the policy, the insurance covers amounts required to be paid for a claim or claims made against directors and officers for any act, error, omission, misstatement, misleading statement or breach of duty by directors and officers in their

capacity as directors and officers of the Company.

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The effect of these provisions is to indemnify our directors and officers against all costs and expenses of liability incurred by them in connection with any action, suit or proceeding in which they are involved by reason of their affiliation with us, to the fullest extent permitted by law.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers or persons pursuant to the foregoing provisions, we have been informed that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

**Item 16. Exhibits**

The exhibits listed on the accompanying Exhibit Index are filed or incorporated by reference as part of this Registration Statement.

**Item 17. Undertakings**

The Registrant hereby undertakes:

(1) To file, during any period in which it offers or sells securities, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933, as amended (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 Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent 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.

(2) That, for the purpose of determining any liability under the Securities Act, each post-effective amendment shall be deemed a new registration statement relating to the securities offered therein, and the offering of such securities at the that time shall be deemed 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 this offering.

(4) For the purpose of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 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.

(5) To deliver or cause to be delivered with the prospectus, to each person to whom the prospectus is sent or given, the latest annual report to security holders that is incorporated by reference in the prospectus and furnished pursuant to and meeting the requirements of Rule 14a-3 or Rule 14c-3 under the Securities Exchange Act of 1934; and, where interim financial information required to be presented by Article 3 of Regulation S-X is not set forth in the prospectus, to deliver, or cause to be delivered to each person to whom the prospectus is sent or given, the latest quarterly report that is specifically incorporated by reference in the prospectus to provide such interim financial information.

(6) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the issuer pursuant to the foregoing provisions, or otherwise, the issuer has been advised that in the opinion of the Securities and Exchange 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 issuer of expenses incurred or paid by a director, officer or controlling person of the issuer 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 issuer 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.

(7) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(8) For determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus 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.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Walla Walla, State of Washington, on December 20, 2004.

Key Technology, Inc.

By /s/ Kirk W. Morton  
Kirk W. Morton  
President and Chief Executive Officer  
(Principal Executive Officer)

By /s/ Phyllis C. Best  
Phyllis C. Best  
Chief Financial Officer  
(Principal Financial and Accounting  
Officer)

Know all men by these presents, that each person whose signature appears below hereby constitutes and appoints Kirk W. Morton and Phyllis C. Best, or either of them, as his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution for him and in his name, place and stead, and in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite or necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his substitute, may lawfully 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.

Signature	Title	Date
/s/ Thomas C. Madsen Thomas C. Madsen	Chairman of the Board	December 20, 2004
/s/ Donald A. Washburn Donald A. Washburn	Director	December 20, 2004
/s/ Kirk W. Morton Kirk W. Morton	Director	December 20, 2004
/s/ John E. Pelo John E. Pelo	Director	December 20, 2004
/s/ Michael L. Shannon Michael L. Shannon	Director	December 20, 2004

/s/ Charles H. Stonecipher  
Charles H. Stonecipher

Director

December 20, 2004

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**EXHIBITS**

EXHIBIT NO. DESCRIPTION

- 4.1 Restated Articles of Incorporation (filed as Exhibit 3.1 to the Registration Statement on Form S-1 (Registration No. 33-63194) filed with the Securities and Exchange Commission on May 24, 1993 and incorporated herein by reference)
- 4.2 First Amended and Restated Rights Agreement, dated as of April 1, 2001, between the Registrant and American Stock Transfer & Trust Company (filed as Exhibit 10.1 to the Form 10-Q filed with the Securities and Exchange Commission on August 13, 2004 and incorporated herein by reference)
- 4.3 Form of Rights Certificate (filed as Exhibit B to Exhibit 4.1 to the Registration Statement on Form 8-A filed with the Securities and Exchange Commission on June 24, 1998 and incorporated herein by reference)
- 5.1 Opinion of Tonkon Torp LLP
- 23.1 Consent of Deloitte & Touche LLP, Independent Registered Public Accounting Firm
- 23.2 Consent of Tonkon Torp LLP is included in Exhibit 5.1 to this Registration Statement
- 24.1 Power of Attorney (on signature page)