

IRIDEX CORP
Form S-8
November 21, 2008

As filed with the Securities and Exchange Commission on November 21, 2008

Registration No. 333-_____

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT

Under

The Securities Act of 1933

IRIDEX CORPORATION

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

1212 Terra Bella Avenue

Mountain View, California 94043

77-0210467
(I.R.S. Employer
Identification Number)

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(650) 940-4700

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

2008 Equity Incentive Plan

(Full title of the plans)

Theodore A. Boutacoff

President and Chief Executive Officer

1212 Terra Bella Avenue

Mountain View, California 94043

(Name and address of agent for service)

(650) 940-4700

(Telephone number, including area code, of agent for service)

Copies to:

David J. Segre, Esq.

Wilson Sonsini Goodrich & Rosati

Professional Corporation

650 Page Mill Road

Palo Alto, CA 94304-1050

(650) 493-9300

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

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Large accelerated filer

Accelerated filer

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

Smaller reporting company

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CALCULATION OF REGISTRATION FEE

| Title 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 |
|---|----------------------------------|---|---|-------------------------------|
| Common Stock, \$0.01 par value per share, to be issued upon exercise of options granted under the 2008 Equity Incentive Plan (the 2008 Plan) | 300,000 | \$1.48(2) | \$444,000 | \$17.45 |
| Common Stock, \$0.01 par value per share, to be transferred from the 1998 Stock Plan (the 1998 Plan) to the 2008 Plan. | 1,367,361(3) | | | |
| TOTAL | 1,667,361 | | | \$17.45 |

- (1) Pursuant to Rule 416(a) of the Securities Act of 1933, as amended, this Registration Statement shall also cover any additional shares of the Registrant's common stock that become issuable under the 2008 Plan by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without receipt of consideration that increases the number of the Registrant's outstanding shares of common stock.
- (2) Estimated in accordance with Rule 457(h) and Rule 457(c) solely for the purpose of calculating the registration fee on the basis of \$1.48 per share, which represents the average of the high and low prices reported on the Nasdaq Global Market on November 18, 2008.
- (3) 1,367,361 shares subject to stock options or similar awards granted under the 1998 Plan that may expire or otherwise terminate without having been exercised in full or were issued pursuant to awards granted under the 1998 Plan that may be forfeited to or repurchased by the Registrant on or after February 23, 2008, the date the 1998 Plan expired, will be transferred to the 2008 Plan. The number of shares that will be transferred from the 1998 Plan to the 2008 Plan is subject to change but will be no more than 1,367,361 shares. No registration fee is being paid in connection with the 1,367,361 shares being transferred from the 1998 Stock Plan to the 2008 Plan as the shares were previously registered.

IRIDEX CORPORATION

REGISTRATION STATEMENT ON FORM S-8

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. Plan Information.

The documents containing the information specified in this Item 1 will be sent or given to employees, officers, directors or others as specified by Rule 428(b)(1) under the Securities Exchange Act of 1934, as amended (the Exchange Act). In accordance with the rules and regulations of the Securities and Exchange Commission (the Commission) and the instructions to Form S-8, 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 under the Securities Act.

Item 2. Registrant Information and Employee Plan Annual Information.

The documents containing the information specified in this Item 2 will be sent or given to employees, officers, directors or others as specified by Rule 428(b)(1) under the Securities Act. In accordance with the rules and regulations of the Commission and the instructions to Form S-8, 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 under the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

There are hereby incorporated by reference in this Registration Statement the following documents and information previously filed by the Registrant with the Commission:

1. The Registrant's Annual Report on Form 10-K for the fiscal year ended December 29, 2007, filed with the Commission on April 10, 2008, pursuant to Section 13 of the Exchange Act;
2. The Registrant's Quarterly Report on Form 10-Q filed with the Commission, pursuant to Section 13 of the Exchange Act, for the fiscal quarter ended March 29, 2008 as filed on May 13, 2008;
3. The Registrant's Quarterly Report on Form 10-Q filed with the Commission, pursuant to Section 13 of the Exchange Act, for the fiscal quarter ended June 28, 2008 as filed on August 12, 2008;
4. The Registrant's Quarterly Report on Form 10-Q filed with the Commission, pursuant to Section 13 of the Exchange Act, for the fiscal quarter ended September 27, 2008 as filed on November 4, 2008;
5. The Registrant's Current Reports on Form 8-K filed with the Commission pursuant to Section 13 of the Exchange Act on January 28, 2008, April 2, 2008 (only with respect to Items 1.01 and 2.03), April 16, 2008 and November 7, 2008; and

6. The description of the Registrant's Common Stock contained in the Registrant's Registration Statement on Form 8-A filed on February 15, 1996, pursuant to Section 12(b) of the Exchange Act, and any further amendment or report filed hereafter 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 on or after the date of this Registration Statement and prior to the filing of a post-effective amendment which indicates that all securities offered 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 of such documents. For the purposes of 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 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 such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

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(a) of the Delaware General Corporation Law (the "DGCL") provides in relevant part that "[a] corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person's conduct was unlawful. With respect to derivative actions, Section 145(b) of the DGCL provides in relevant part that "[a] corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor .[by reason of the person's service in one of the capacities specified in the preceding sentence] against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

The Registrant's Amended and Restated Certificate of Incorporation provides that to the fullest extent permitted by the DGCL, no director of the Registrant shall be personally liable to the Registrant or its stockholders for monetary damages for breach of fiduciary duty as a director. The Restated Certificate of Incorporation also provides that no amendment or repeal of such provision shall apply to or have any effect on the right to indemnification permitted thereunder with respect to claims arising from acts or omissions occurring in whole or in part before the effective date of such amendment or repeal whether asserted before or after such amendment or repeal.

The Registrant's bylaws provide for the indemnification of officers, directors and third parties acting on behalf of the Registrant if such person acted in good faith and in a manner reasonably believed to be in and not opposed to the best interest of the Registrant, and, with respect to any criminal action or proceeding, the indemnified party had no reason to believe his or her conduct was unlawful. The Registrant has entered into indemnification agreements with its directors and executive officers and intends to enter into indemnification agreements with any new directors and executive officers in the future.

The Registrant carries officer and director liability insurance with respect to certain matters, including matters arising under the Securities Act.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

| Exhibit Number | Description |
|-----------------------|---|
| 4.1 | 2008 Equity Incentive Plan (<i>incorporated herein by reference to Registrant's 2008 Definitive Proxy Statement, filed on April 28, 2008</i>) |
| 5.1 | Opinion of Wilson Sonsini Goodrich & Rosati, Professional Corporation, counsel to the Registrant |
| 23.1 | Consent of Burr, Pilger & Mayer LLP, Independent Registered Public Accounting Firm |
| 23.2 | Consent of PricewaterhouseCoopers LLP, Independent Registered Public Accounting Firm |
| 23.3 | Consent of Wilson Sonsini Goodrich & Rosati, Professional Corporation (contained in Exhibit 5.1) |
| 24.1 | Power of Attorney (see page 6) |
| 99.1 | Form of 2008 Equity Incentive Plan Option Agreement |

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 of 1933;

(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 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.

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 Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in this 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.

B. 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 Section 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.

C. 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 Securities Act of 1933 and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant certifies that it has reasonable grounds to believe that it meets all of 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 Mountain View, State of California, on November 21, 2008.

IRIDEX CORPORATION

By: /s/ Theodore A. Boutacoff
Theodore A. Boutacoff
President, Chief Executive Officer and Chairman
(Principal Executive Officer)

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Theodore A. Boutacoff and James H. Mackaness, and each of them acting individually, as their true and lawful attorneys and agents, each with full power of substitution, to sign and file on behalf of the undersigned any amendment or amendments to this Registration Statement on Form S-8 (including post-effective amendments) with all exhibits thereto and other documents in connection therewith with the Securities and Exchange Commission and granting unto said attorneys and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the foregoing, as full to all intents and purposes as the undersigned might or could do in person, and each of the undersigned does hereby ratify and confirm all that said attorneys and agents, or their or his substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed on November 21, 2008 by the following persons in the capacities and on the dates indicated.

| Signature | Title | Date |
|--|---|-------------------|
| /s/ Theodore A. Boutacoff Theodore A. Boutacoff | President, Chief Executive Officer and Chairman of the Board (Principal Executive Officer) | November 21, 2008 |
| /s/ James H. Mackaness James H. Mackaness | Chief Financial Officer (Principal Financial Officer) | November 21, 2008 |
| /s/ Donald L. Hammond Donald L. Hammond | Director | November 21, 2008 |
| /s/ William M. Moore William M. Moore | Director | November 21, 2008 |
| /s/ James L. Donovan James L. Donovan | Director | November 21, 2008 |
| /s/ Sanford Fitch Sanford Fitch | Director | November 21, 2008 |

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/s/ Garrett A. Garrettson

Director

November 21, 2008

Garrett A. Garrettson

/s/ James B. Hawkins

Director

November 21, 2008

James B. Hawkins

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INDEX TO EXHIBITS

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