

MINDSPEED TECHNOLOGIES, INC

Form S-8

February 27, 2013

As filed with the Securities and Exchange Commission on February 27, 2013.

Registration Statement No. 333-

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM S-8
REGISTRATION STATEMENT**

UNDER

THE SECURITIES ACT OF 1933

Mindspeed Technologies, Inc.

(Exact Name of Registrant as Specified in Its Charter)

DELAWARE
(State or Other Jurisdiction of

Incorporation or Organization)

01-0616769
(I.R.S. Employer

Identification Number)

4000 MacArthur Boulevard, East Tower

Newport Beach, California
(Address of Principal Executive Offices)

92660-3095
(Zip Code)

Mindspeed Technologies, Inc. 2013 Equity Incentive Plan

(Full Title of the Plan)

Brandi R. Steege

Senior Vice President, General Counsel and Secretary

Mindspeed Technologies, Inc.

4000 MacArthur Boulevard, East Tower

Newport Beach, California 92660-3095

(Name and Address of Agent For Service)

(949) 579-3000

(Telephone Number, Including Area Code, of Agent For Service)

Copy to:

Robert F. Kornegay

Wilson Sonsini Goodrich & Rosati, P.C.

12235 El Camino Real, Suite 200

San Diego, California 92130-3002

(858) 350-2300

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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. (Check one):

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

Calculation of Registration Fee

Title of Securities To Be Registered	Amount To Be Registered (1)(2)	Proposed Maximum Offering Price Per Share (3)	Proposed Maximum Aggregate Offering Price (3)	Amount of Registration Fee
Common Stock, par value \$0.01 per share (including the associated Preferred Share Purchase Rights)(4)	8,837,593	\$4.88	\$43,127,454	\$5,882.59

- (1) The number of shares of common stock, par value \$0.01 per share (the Common Stock), of Mindspeed Technologies, Inc., a Delaware corporation (the Registrant or the Company), to be registered pursuant to this Registration Statement include, pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the Securities Act), such additional number of shares of Common Stock as may be offered or issued as a result of any stock splits, stock dividends or similar transactions.
- (2) Represents shares that may be issued or become issuable pursuant to the Mindspeed Technologies, Inc. 2013 Equity Incentive Plan (the 2013 Plan), which includes up to 4,237,593 shares subject to currently outstanding stock options, restricted stock units or similar awards granted pursuant to the Mindspeed Technologies, Inc. 2003 Long-Term Incentives Plan (the 2003 Plan) and the Mindspeed Technologies, Inc. Directors Stock Plan (the Directors Plan) that may expire or otherwise terminate in the future without being exercised in full or that are forfeited to or repurchased by the Company and that may be added to the 2013 Plan from the 2003 Plan and the Directors Plan.
- (3) Estimated solely for purposes of calculating the registration fee pursuant to Rule 457(c) and (h) under the Securities Act, based upon the average of the high and low prices of the Registrant's Common Stock on February 22, 2013, as reported on The NASDAQ Global Select Market.
- (4) Comprised of rights to purchase shares of the Registrant's Series A Junior Participating Preferred Stock, par value \$0.01 per share, and Series B Junior Participating Preferred Stock, par value \$0.01 per share (collectively, the Preferred Share Purchase Rights), that are associated with shares of Common Stock pursuant to: (i) the Rights Agreement, dated as of June 26, 2003, as amended, by and between Mellon Investor Services LLC as Rights Agent; and (ii) the Section 382 Rights Agreement, dated as of August 9, 2009, as amended, by and between the Registrant and Mellon Investor Services LLC as Rights Agent (together with the previously referenced Rights Agreement, the Rights Agreements). The Preferred Share Purchase Rights are not exercisable until the occurrence of certain events specified in the Rights Agreements and are transferable solely with the associated Common Stock. The value attributable to the Preferred Share Purchase Rights, if any, is reflected in the value of the associated Common Stock.

PART I

INFORMATION REQUIRED IN THE

SECTION 10(a) PROSPECTUS

On February 12, 2013, the Company's stockholders approved the adoption of the 2013 Plan to replace the Mindspeed Technologies, Inc. 2003 Long-Term Incentives Plan, the Mindspeed Technologies, Inc. Directors Stock Plan and the Mindspeed Technologies, Inc. Inducement Incentive Plan. This Registration Statement registers 8,837,593 additional shares of Common Stock that may be issued or become issuable pursuant to the 2013 Plan.

The documents containing the information specified in Item 1. Plan Information and Item 2. Registrant Information and Employee Plan Annual Information of this Part I of this Registration Statement will be sent or given to employees as specified by Rule 428(b)(1) of the Securities Act. These documents and the documents incorporated by reference in 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, which have been filed with the SEC, are incorporated herein by reference and made a part hereof:

- (a) Annual Report on Form 10-K of the Company for the fiscal year ended September 28, 2012, filed with the SEC on December 12, 2012;
- (b) All other reports filed by the Company pursuant to Sections 13(a) or 15(d) of the Exchange Act of 1934, as amended (the Exchange Act) since the end of the fiscal year covered by the audited financial statements described in (a) above;
- (c) The description of the Company's capital stock contained in its Registration Statement on Form 8-A, as amended, filed with the SEC on December 9, 2003, including any amendment or report filed for the purpose of updating such description (including an amendment thereto dated as of December 6, 2004, as filed with the SEC on January 18, 2005);
- (d) The description of the Company's Preferred Share Purchase Rights contained in its Registration Statement on Form 8-A filed with the SEC on June 19, 2008, including any amendment or report filed for the purpose of updating such description; and
- (e) The description of the Company's Preferred Share Purchase Rights contained in its Registration Statement on Form 8-A filed with the SEC on August 10, 2009, including any amendment or report filed for the purpose of updating such description.

All documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated herein by reference and to be a part hereof from the date of filing of such documents. Any statement contained in a document incorporated or deemed to be incorporated herein by reference 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 that statement. Any such statement so modified or superseded shall not 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.

The General Corporation Law of the State of Delaware (the "DGCL") permits Delaware corporations to eliminate or limit the monetary liability of directors for breach of their fiduciary duty of care, subject to limitations. The Company's amended and restated certificate of incorporation provides that the Company's directors are not liable to the Company or its shareholders for monetary damages for breach of fiduciary duty as a director, except for liability: (i) for any breach of the director's duty of loyalty to the Company or its shareholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) for willful or negligent violation of the laws governing the payment of dividends or the purchase or redemption of stock; or (iv) for any transaction from which a director derived an improper personal benefit.

The DGCL provides for indemnification of directors, officers, employees and agents subject to limitations. The Company's amended and restated Bylaws and the appendix thereto provide for the indemnification of directors and officers and permit the indemnification of employees and agents to the extent permitted by Delaware law. The Company's directors and officers also are insured against certain liabilities for actions taken in such capacities, including liabilities under the Securities Act.

Section 145(a) of the DGCL provides that a Delaware corporation may 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 such 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 or enterprise, against expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if he acted in good faith and in a manner he 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 cause to believe his conduct was unlawful.

Section 145(b) of the DGCL provides that a Delaware corporation may 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 corporation to procure a judgment in its favor by reason of the fact that such person acted in any of the capacities set forth above, against expenses actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if he or she acted under similar standards to those set forth above, except that no indemnification may be made in respect to 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 in which such action or suit was brought shall determine that despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to be indemnified for such expenses which the court shall deem proper.

Section 145 of the DGCL further provides that to the extent a director or officer of a corporation has been successful in the defense of any action, suit or proceeding referred to in subsection (a) and (b) or in the defense of any claim, issue or matter therein, he shall be indemnified against expenses actually and reasonably incurred by him in connection therewith; that indemnification provided for by Section 145 shall not be deemed exclusive of any other rights to which the indemnified party may be entitled; and that the corporation may purchase and maintain insurance on behalf of a director or officer of the corporation against any liability asserted against such officer or director and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the corporation would have the power to indemnify him or her against such liabilities under Section 145.

As permitted by Section 102(b)(7) of the DGCL, the Company's amended and restated certificate of incorporation provides that a director of the Company shall not be liable to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director. However, this provision does not eliminate or limit the liability of a director for acts or omissions not in good faith or for breaching his or her duty of loyalty, engaging in intentional misconduct or knowingly violating the law, paying a dividend or approving a stock repurchase which was illegal, or obtaining an improper personal benefit. A provision of this type has no effect on the availability of equitable remedies, such as injunction or rescission, for breach of fiduciary duty.

The Company has a policy of directors' liability insurance that insures the directors and officers against the cost of defense, settlement or payment of a judgment under certain circumstances. In addition, the Company has entered into separate indemnification agreements with our directors and officers which may be broader than the specific indemnification provisions contained in the DGCL. These indemnification agreements may require the Company, among other things, to indemnify our officers and directors against liabilities that may arise by reason of their status or service as directors or officers. These indemnification agreements also may require us to advance any expenses incurred by the directors or officers as a result of any proceeding against them as to which they could be indemnified.

Item 7. Exemption from Registration Claimed.

Not Applicable.

Item 8. Exhibits.

- 4.1 Specimen certificate for the Registrant's Common Stock, par value \$.01 per share, filed as Exhibit 4.1 to the Registrant's Registration Statement on Form S-8 (Registration Statement No. 333-173328), is incorporated by reference.
- 4.2 Rights Agreement dated as of June 26, 2003, by and between the Registrant and Mellon Investor Services LLC, as Rights Agent, filed as Exhibit 4.1 to the Registrant's Current Report on Form 8-K dated July 1, 2003, is incorporated herein by reference.
- 4.3 First Amendment to Rights Agreement, dated as of December 6, 2004, by and between the Registrant and Mellon Investor Services LLC, filed as Exhibit 4.4 to the Registrant's Current Report on Form 8-K dated December 2, 2004, is incorporated herein by reference.
- 4.4 Second Amendment to Rights Agreement, dated as of June 16, 2008, by and between the Registrant and Mellon Investor Services LLC, filed as Exhibit 4.1 to the Registrant's Current Report on Form 8-K dated June 16, 2008, is incorporated herein by reference.
- 4.5 Section 382 Rights Agreement, dated as of August 9, 2009, between the Registrant and Mellon Investor Services LLC, filed as Exhibit 4.1 to the Registrant's Current Report on Form 8-K dated August 9, 2009, is incorporated herein by reference.
- 4.6 Amendment No. 1 to Section 382 Rights Agreement, dated as of August 9, 2012, between the Registrant and Computershare Shareowners Services LLC (as successor to Mellon Investor Services LLC) as Rights Agent, filed as Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed on August 9, 2012, is incorporated herein by reference.
- 4.7 Common Stock Purchase Warrant dated June 27, 2003, filed as Exhibit 4.5 to the Registrant's Registration Statement on Form S-3 (Registration Statement No. 333-109523), is incorporated herein by reference.

- 4.8 Registration Rights Agreement dated as of June 27, 2003, by and between the Registrant and Conexant Systems, Inc., filed as Exhibit 4.6 to the Registrant's Registration Statement on Form S-3 (Registration Statement No. 333-109523), is incorporated herein by reference.
- 4.9 Indenture, dated as of August 1, 2008, between the Registrant and Wells Fargo Bank, N.A., filed as Exhibit 4.1 to the Registrant's Current Report on Form 8-K dated August 4, 2008, is incorporated herein by reference.
- 4.10 Form of 6.50% Convertible Senior Notes due 2013, attached as Exhibit A to the Indenture (Exhibit 4.8 hereto), is incorporated herein by reference.
- 4.11 Declaration of Registration Rights, dated February 6, 2012, from the Registrant, filed as Exhibit 4.10 to the Registrant's Quarterly Report on Form 10-Q for the fiscal quarter ended March 30, 2012, is incorporated herein by reference.
- 4.12 Indenture, dated as of June 19, 2012, by and among the Registrant, certain Subsidiaries of the Registrant and Wells Fargo Bank, National Association, as trustee, filed as Exhibit 4.11 to the Registrant's Quarterly Report on Form 10-Q for the fiscal quarter ended June 29, 2012, is incorporated herein by reference.
- 4.13 Form of 6.75% Convertible Senior Notes due 2017, attached as Exhibit A to the Indenture (Exhibit 4.12 hereto), is incorporated herein by reference.
- 4.14 Mindspeed Technologies, Inc. 2013 Equity Incentive Plan, filed as Exhibit 10.1 to the Registrant's Current Report on Form 8-K dated February 12, 2013, is incorporated herein by reference.
- 4.15 Form of Stock Option Award Agreement under the Mindspeed Technologies, Inc. 2013 Equity Incentive Plan, filed as Exhibit 10.2 to the Registrant's Current Report on Form 8-K dated February 12, 2013, is incorporated herein by reference.
- 4.16 Form of Restricted Stock Award Agreement under the Mindspeed Technologies, Inc. 2013 Equity Incentive Plan, filed as Exhibit 10.3 to the Registrant's Current Report on Form 8-K dated February 12, 2013, is incorporated herein by reference.
- 4.17 Form of Restricted Stock Award Agreement for Non-U.S. Service Providers under the Mindspeed Technologies, Inc. 2013 Equity Incentive Plan, filed as Exhibit 10.4 to the Registrant's Current Report on Form 8-K dated February 12, 2013, is incorporated herein by reference.
- 4.18 Form of Restricted Stock Unit Award Agreement under the Mindspeed Technologies, Inc. 2013 Equity Incentive Plan, filed as Exhibit 10.5 to the Registrant's Current Report on Form 8-K dated February 12, 2013, is incorporated herein by reference.
- 4.19 Form of Restricted Stock Unit Award Agreement for Non-U.S. Service Providers under the Mindspeed Technologies, Inc. 2013 Equity Incentive Plan, filed as Exhibit 10.6 to the Registrant's Current Report on Form 8-K dated February 12, 2013, is incorporated herein by reference.
- 4.20 Form of Performance Share Award Agreement under the Mindspeed Technologies, Inc. 2013 Equity Incentive Plan, filed as Exhibit 10.1 to the Registrant's Current Report on Form 8-K dated February 26, 2013, is incorporated herein by reference.
- 5 Opinion of Wilson Sonsini Goodrich & Rosati, P.C.
- 23.1 Consent of Deloitte & Touche LLP, independent registered public accounting firm.
- 23.2 Consent of Wilson Sonsini Goodrich & Rosati, P.C. (included in Exhibit 5 to this Registration Statement).
- 24 Power of Attorney (contained on the signature page of this Registration Statement).

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 this 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 this Registration Statement; and (iii) to include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement; provided, however, that clauses (1)(i) and (1)(ii) shall 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 SEC by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in this 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; and (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 that is incorporated by reference in this 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 or 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 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 of 1933, 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 Newport Beach, State of California, on the 27th day of February, 2013.

MINDSPEED TECHNOLOGIES, INC.

By: /s/ Brandi R. Steege
Brandi R. Steege
Senior Vice President, General Counsel and Secretary

POWER OF ATTORNEY

Each director and officer of the registrant whose signature appears below hereby appoints Raouf Y. Halim and Stephen N. Ananias, and each of them individually, as his or her true and lawful attorney-in-fact and agent to sign in his name and behalf, in any and all capacities stated below, and to file with the Securities and Exchange Commission, any and all amendments, including post-effective amendments, exhibits thereto, and other documents in connection therewith, to this Registration Statement, and the registrant hereby also appoints each such person as its attorney-in-fact and agent with like authority to sign and file any such amendments in its name and behalf.

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/ Raouf Y. Halim	Chief Executive Officer and Director	February 26, 2013
Raouf Y. Halim	(Principal Executive Officer)	
/s/ Stephen N. Ananias	Senior Vice President and Chief Financial Officer (Principal Financial Officer)	February 26, 2013
Stephen N. Ananias		
/s/ James M. Watkins	Vice President, Finance	February 26, 2013
James M. Watkins	(Principal Accounting Officer)	
	Chairman of the Board	
Dwight W. Decker		
/s/ Robert J. Conrad	Director	February 26, 2013
Robert J. Conrad		
/s/ Michael T. Hayashi	Director	February 26, 2013
Michael T. Hayashi		
/s/ Ming Louie	Director	February 27, 2013
Ming Louie		
	Director	
Thomas A. Madden		
/s/ Jerre L. Stead	Director	February 26, 2013
Jerre L. Stead		

EXHIBIT INDEX

Exhibit Number	Description
5	Opinion of Wilson Sonsini Goodrich & Rosati, P.C.
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24	Power of Attorney (contained on the signature page of this Registration Statement).