

MINDSPEED TECHNOLOGIES, INC

Form S-8

May 14, 2009

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As filed with the Securities and Exchange Commission on May 14, 2009.

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 **01-0616769**
(State or Other Jurisdiction of Incorporation or **(I.R.S. Employer Identification Number)**
Organization)

4000 MacArthur Boulevard, East Tower
Newport Beach, California 92660-3095
(Address of Principal Executive Offices) **(Zip Code)**

**Mindspeed Technologies, Inc. 2003 Long-Term Incentives Plan
Mindspeed Technologies, Inc. 2003 Stock Option Plan
Mindspeed Technologies, Inc. Non-Qualified Stock Option Award Agreement
(Full Title of the Plan)**

Brandi R. Steege
Vice President, Legal, 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 M. Mattson, Jr.
Brandon C. Parris
Morrison & Foerster LLP
425 Market Street
San Francisco, California 94105
(415) 268-7000**

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 Smaller reporting company

(Do not check if a 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	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, par value \$0.01 per share (including the associated Preferred Share Purchase Rights)	2,872,481	\$ 2.08(3)	\$ 5,974,761	\$333.39
Common Stock, par value \$0.01 per share (including the associated Preferred Share Purchase Rights)	200,000	\$ 3.87(4)	\$ 774,000(4)	\$ 43.19
Total	3,072,481		\$ 6,748,761(3)	\$376.58

(1) The shares of Common Stock set forth in the Calculation of Registration Fee table and which may be offered pursuant to this Registration Statement include, pursuant to Rule 416 under the Securities Act of 1933, as amended (the Securities Act), such additional number of shares of the Registrant's Common Stock as may be offered or issued as a result of any stock splits,

stock dividends
or similar
events.

- (2) Of the total amount registered, 2,815,000 shares are reserved for issuance under the Mindspeed Technologies, Inc. 2003 Long-Term Incentives Plan, 57,481 shares are reserved for issuance under the Mindspeed Technologies, Inc. 2003 Stock Option Plan and 200,000 shares are reserved for issuance under the Mindspeed Technologies, Inc. Non-Qualified Stock Option Award Agreement granted to Bret W. Johnsen as inducement to employment with the Registrant (the Inducement Grant).
- (3) Estimated solely for purposes of calculating the registration fee pursuant to Rule 457(h) under the Securities Act, based upon the average of the

high and low prices of the Registrant's Common Stock on May 12, 2009, as reported on The NASDAQ Global Market.

- (4) Estimated solely for purposes of calculating the registration fee pursuant to Rule 457(h) under the Securities Act. The price of \$3.87 per share represents the closing price per share of Common Stock, as reported on The NASDAQ Global Market, on July 24, 2008, the grant date of the Inducement Grant.

EXPLANATORY NOTE

Pursuant to General Instruction E of Form S-8, this Registration Statement hereby incorporates by reference the contents of the Registration Statements on Form S-8 (Registration Nos. 333-142298, 333-124289 and 333-106479) filed with the Securities and Exchange Commission (the "SEC") by Mindspeed Technologies, Inc. (the "Company") on April 23, 2007, April 25, 2005 and June 25, 2003, respectively, including any amendments thereto or filings incorporated therein, relating to the Mindspeed Technologies, Inc. 2003 Long-Term Incentives Plan, except as expressly modified herein.

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**PART I
INFORMATION REQUIRED IN THE
SECTION 10(a) PROSPECTUS**

The documents containing the information specified in this Part I of Form S-8 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 October 3, 2008, filed with the SEC on December 16, 2008 (including the portions of the Company's Definitive Proxy Statement on Form DEF 14A for the Company's 2009 Annual Meeting of Stockholders incorporated by reference therein);
- (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 Commission on January 18, 2005); and
- (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.

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

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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 Delaware General Corporation Law (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 stockholders for monetary damages for breach of fiduciary duty as a director, except for liability for: (i) any breach of the director's duty of loyalty to the Company or its stockholders; (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) willful or negligent violation of the laws governing the payment of dividends or the purchase or redemption of stock; or (iv) 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, officers, 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

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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.

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 Quarterly Report on Form 10-Q for the fiscal quarter ended June 27, 2008, is incorporated herein 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 11, 2008, is incorporated herein by reference.
 - 4.5 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.
 - 4.6 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.
 - 4.7 Indenture, dated as of December 8, 2004, 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 December 2, 2004, is incorporated herein by reference.
 - 4.8 Form of 3.75% Convertible Senior Notes due 2009, attached as Exhibit A to the Indenture (Exhibit 4.7 hereto), is incorporated herein by reference.
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- 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 4.9 hereto), is incorporated herein by reference.
- 4.11 Mindspeed Technologies, Inc. 2003 Long-Term Incentives Plan, as amended and restated, filed as Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on March 13, 2009, is incorporated herein by reference.
- 4.12 Mindspeed Technologies, Inc. 2003 Stock Option Plan, as amended and restated, filed as Appendix C to the Registrant's Definitive Proxy Statement on Form DEF 14A filed on January 29, 2009, is incorporated herein by reference.
- 4.13 Mindspeed Technologies, Inc. Non-Qualified Stock Option Award Agreement between the Company and Bret W. Johnsen, filed as Exhibit 10.5 to the Registrant's Quarterly Report on Form 10-Q filed on August 5, 2008, is incorporated herein by reference.
- 5 Opinion of Morrison & Foerster LLP as to the legality of any newly issued shares of Common Stock of the Registrant covered by this Registration Statement.
- 23.1 Consent of Deloitte & Touche LLP, independent registered public accounting firm.
- 23.2 Consent of Morrison & Foerster LLP (included in Exhibit 5).
- 24 Power of Attorney (contained on signature page).

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

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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.

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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 13th day of May, 2009.

MINDSPEED TECHNOLOGIES, INC.

By: /s/ Bret W. Johnsen
Bret W. Johnsen
Senior Vice President, Chief Financial Officer
and
Treasurer

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Each director and officer of the registrant whose signature appears below hereby appoints Raouf Y. Halim and Bret W. Johnsen, 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 Raouf Y. Halim	Chief Executive Officer and Director (Principal Executive Officer)	May 11, 2009
/s/ Bret W. Johnsen Bret W. Johnsen	Senior Vice President, Chief Financial Officer and Treasurer (Principal Financial Officer and Principal Accounting Officer)	May 11, 2009
/s/ Dwight W. Decker Dwight W. Decker	Chairman of the Board	May 11, 2009
/s/ Michael T. Hayashi Michael T. Hayashi	Director	May 8, 2009
/s/ Ming Louie Ming Louie	Director	May 7, 2009
Thomas A. Madden	Director	
/s/ Jerre L. Stead Jerre L. Stead	Director	May 7, 2009

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EXHIBIT INDEX

Exhibit Number	Description
5	Opinion of Morrison & Foerster LLP as to the legality of any newly issued shares of Common Stock of the Registrant covered by this Registration Statement.
23.1	Consent of Deloitte & Touche LLP, independent registered public accounting firm.
23.2	Consent of Morrison & Foerster LLP (included in Exhibit 5).
24	Power of Attorney (contained on signature page).