

EMAGIN CORP
Form S-8
January 27, 2009

As filed with the Securities and Exchange Commission on January 27, 2009
Reg. No. 333-_____

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933
eMagin Corporation

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or
organization)

56-1764501
(I.R.S. Employer identification No.)

EMAGIN CORPORATION 2008 INCENTIVE STOCK PLAN

(full title of plans)

Andrew Sculley, Chief Executive Officer
10500 N.E. 8th Street, Suite 1400
Bellevue, WA 98004
(Name and address of agent for service)

(425) 749-3600
(Telephone number, including area code, of agent for service)

Copies to:

Richard A. Friedman, Esq.
Sichenzia Ross Friedman Ference LLP
61 Broadway, 32nd Fl.
New York, NY 10006
(212) 930-9700
(212) 930-9725 (fax)

CALCULATION OF REGISTRATION FEE

| Title of each class of securities to be registered | Amount to be Registered (1) | Proposed Maximum Offering Price Per Security | Proposed Maximum Aggregate Offering Price | Amount of Registration Fee |
|--|-----------------------------|--|---|----------------------------|
| Common Stock, \$0.001 par value | 2,000,000(2) | \$ 0.54(3) | \$ 1,080,000 | \$ 42.44 |
| Total | 2,000,000 | | \$ 1,080,000 | \$ 42.44 |

(1) Pursuant to Rule 416 promulgated under the Securities Act of 1933, as amended, there are also registered hereunder such indeterminate number of additional shares as may be issued to the selling stockholders to prevent dilution resulting from stock splits, stock dividends or similar transactions.

(2) Represents 2,000,000 shares of common stock issuable upon exercise of stock options reserved for issuance under the 2008 Incentive Stock Plan.

(3) Computed pursuant to Rule 457(c) of the Securities Act of 1933, as amended, solely for the purpose of calculating the registration fee and not as a representation as to any actual proposed price. The offering price per share, maximum aggregate offering price and registration fee is based upon the average of the high and the low price on the over the counter bulletin board of \$0.58 and \$0.49, respectively, on January 22, 2009.

EXPLANATORY NOTE

This Registration statement is being filed in accordance with the requirements of Form S-8 in order to register 2,000,000 shares of the Common Stock of eMagin Corporation (the "Company") issuable under the eMagin Corporation 2008 Incentive Stock Plan.

Part I

Item 1. Plan Information.

The documents containing the information specified in Item 1 will be sent or given to participants in the Plan as specified by Rule 428(b)(1) of the Securities Act of 1933, as amended (the "Securities Act"). Such documents are not required to be and are not filed with the Securities and Exchange Commission (the "SEC") either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424. These documents and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II of this Form S-8, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

Item 2. Registrant Information and Employee Plan Annual Information.

We will provide to each Recipient a written statement advising it of the availability of documents incorporated by reference in Item 3 of Part II of this Registration Statement and of documents required to be delivered pursuant to Rule 428(b) under the Securities Act without charge and upon written or oral notice by contacting:

Andrew Sculley, Chief Executive Officer
10500 N.E. 8th Street, Suite 1400
Bellevue, WA 98004
(425) 749-3600

Part II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 3. Incorporation of Documents by Reference.

The Registrant hereby incorporates by reference into this Registration Statement the documents listed below. In addition, all documents subsequently filed pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act"), 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 into this Registration Statement and to be a part hereof from the date of filing of such documents:

The following documents filed with the SEC are incorporated herein by reference:

- Reference is made to the Registrant's annual report on Form 10-K/A for the year ended December 31, 2007, as filed with the SEC on January 13, 2009, which is hereby incorporated by reference.
- Reference is made to the Registrant's quarterly report on Form 10-Q for the period ending March 31, 2008, as filed with the SEC on May 15, 2008, which is hereby incorporated by reference.

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- Reference is made to the Registrant's quarterly report on Form 10-Q for the period ending June 30, 2008, as filed with the SEC on August 14, 2008, which is hereby incorporated by reference.
- Reference is made to the Registrant's quarterly report on Form 10-Q for the period ending September 30, 2008, as filed with the SEC on November 14, 2008, which is hereby incorporated by reference.
 - Reference is made to Registrant's Current Reports filed on Form 8-K filed with the SEC on January 3, 2008, February 4, 2008, February 22, 2008, March 31, 2008, April 4, 2008, April 11, 2008, April 18, 2008, May 19, 2008 (as amended by the Current Report on Form 8-K filed with the SEC on August 19, 2008), May 21, 2008, August 14, 2008, August 26, 2008, November 14, 2008, December 23, 2008 and December 31, 2008 each which is hereby incorporated by reference.
 - Reference is made to the Current Report filed on Form 8-K/A filed on February 8, 2008.
- Reference is made to the description of the Registrant's common stock as contained in its Registration Statement on Form S-1/A, filed with the SEC on February 7, 2008, including all amendments and reports filed with the SEC for the purpose of updating such description, which is hereby incorporated by reference.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

The validity of the shares of common stock offered hereby will be passed upon for the Registrant by Sichenzia Ross Friedman Ference LLP, 61 Broadway, 32nd fl., New York, NY 10006. Certain members or employees of Sichenzia Ross Friedman Ference LLP will receive shares of the Company's common stock under this registration statement to be issued as compensation for legal services performed on behalf of the Registrant.

Item 6. Indemnification of Directors and Officers.

The Registrants Articles of Incorporation, as amended and restated, provide to the fullest extent permitted by Section 145 of the General Corporation Law of the State of Delaware, that our directors or officers shall not be personally liable to us or our shareholders for damages for breach of such director's or officer's fiduciary duty. The effect of this provision of our Articles of Incorporation, as amended and restated, is to eliminate our rights and our shareholders' (through shareholders' derivative suits on behalf of our company) to recover damages against a director or officer for breach of the fiduciary duty of care as a director or officer (including breaches resulting from negligent or grossly negligent behavior), except under certain situations defined by statute. We believe that the indemnification provisions in our Articles of Incorporation, as amended, are necessary to attract and retain qualified persons as directors and officers.

Our Bylaws also provide that the Board of Directors may also authorize the Company to indemnify our employees or agents, and to advance the reasonable expenses of such persons, to the same extent, following the same determinations and upon the same conditions as are required for the indemnification of and advancement of expenses to our directors and officers. As of the date of this Registration Statement, the Board of Directors has not extended indemnification rights to persons other than directors and officers.

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

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

EXHIBIT NUMBER EXHIBIT

5.1 Opinion of Sichenzia Ross Friedman Ference LLP.

23.1 Consent of Sichenzia Ross Friedman Ference LLP is contained in Exhibit 5.1.

23.2 Consent of Eisner LLP.

99.1 eMagin Corporation 2008 Incentive Stock Plan.

Item 9. Undertakings.

The Company hereby undertakes:

- (a) (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 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 Securities and Exchange Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 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 (A) paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the Registration Statement is on Form S-8 (§239.16b of Regulation S-K), and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Securities and Exchange Commission by the Company pursuant to section 13 or section 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)) that are incorporated by reference in the Registration Statement; and (B) paragraphs (a)(1)(i), (a)(1)(ii) and (a)(1)(iii) do not apply if the Registration Statement is on Form S-3 or Form F-3, and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Securities and Exchange Commission by the Company pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the Registration Statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the Registration Statement; provided further, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the Registration Statement is for an offering of asset-backed securities on Form S-1 or Form S-3, and the information required to be included in a post-effective amendment is provided pursuant to Item 1100(c) of Regulation AB.
- (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.
- (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.
- (4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:
- (A) Each prospectus filed by a Registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the

registration statement; and

(B) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5) or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii) or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which the prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

- (b) The Company hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Company'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 and controlling persons of the Company pursuant to the foregoing provisions, or otherwise, the Company 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 Company of expenses incurred or paid by a director, officer or controlling person of the Company 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 Company 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 Bellevue, WA on January 27, 2009:

EMAGIN CORPORATION

By: /s/ Andrew Sculley
 Andrew Sculley
 Chief Executive Officer
 (Principal Executive Officer)

By: /s/ Paul Campbell
 Paul Campbell
 Interim Chief Financial Officer
 (Principal Financial Officer and
 Chief Accounting Officer)

Each person whose signature appears below constitutes and appoints Andrew Sculley and Paul Campbell his true and lawful attorneys-in-fact and agent with full powers of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, any Amendments thereto and any Registration Statement of the same offering which is effective upon filing pursuant to Rule 462(b) under the Securities Act, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Commission, granting unto said attorney-in-fact and agent, each acting alone, full powers and authority to do and perform each and every act and thing requisite and 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 said attorney-in-fact and agent, acting alone, or his substitute or 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 below by the following persons in the capacities and on the dates indicated below.

| Signature | Title | Date |
|--------------------------------------|--|------------------|
| /s/ Andrew Sculley Andrew Sculley | Chief Executive Officer (Principal Executive Officer) | January 27, 2009 |
| /s/ Paul Campbell Paul Campbell | Interim Chief Financial Officer (Principal Financial Officer) | January 27, 2009 |
| /s/ Claude Charles Claude Charles | Director | January 27, 2009 |
| /s/ Paul Cronson | | |

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| | | |
|--|----------|------------------|
| Paul Cronson | Director | January 27, 2009 |
| /s/ Irwin Engelman Irwin Engelman | Director | January 27, 2009 |
| Dr. Jacob Goldman | Director | January __, 2009 |
| /s/ Brig. Gen. Stephen Seay Brig. Gen. Stephen Seay | Director | January 27, 2009 |
| /s/ Thomas Paulson Thomas Paulson | Director | January 27, 2009 |

EXHIBIT INDEX

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