

GEN PROBE INC
Form S-8
August 03, 2009

As filed with the Securities and Exchange Commission on August 3, 2009 Registration No. 333-

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

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

GEN-PROBE INCORPORATED
(Exact Name Of Registrant As Specified In Its Charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

33-0044608
(I.R.S. Employer Identification No.)

**10210 Genetic Center Drive
San Diego, California**
(Address Of Principal Executive Offices)

92121
(Zip Code)

The 2003 Incentive Award Plan of Gen-Probe Incorporated
(Full Title Of The Plan)

**Carl W. Hull
President and Chief Executive Officer
Gen-Probe Incorporated
10210 Genetic Center Drive
San Diego, California 92121-4362
Telephone: (858) 410-8000**

(Name, Address, Including Zip Code, And Telephone Number, Including Area Code, Of Agent For Service)

**Copy to:
Steven M. Przesmicki, Esq.
Cooley Godward Kronish LLP
4401 Eastgate Mall
San Diego, California 92121-9109
Telephone: (858) 550-6000**

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):

Non-accelerated filer o

Smaller reporting company o

Large Accelerated filer
 accelerated filer o
 p

(Do not check if a smaller reporting company)
CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price Per Share (2)	Proposed Maximum Aggregate Offering Price (2)	Amount of Registration Fee
Common Stock, par value \$0.0001 per share	2,500,000 shares (3)	\$ 37.08	\$ 92,700,000	\$ 5,173

(1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended, or the Securities Act, this Registration Statement shall also cover any additional shares of the Registrant's common stock, par value \$0.0001 per share, or Common Stock, which become issuable under The 2003 Incentive Award Plan of Gen-Probe Incorporated, as amended, or the 2003 Plan, by reason of any stock dividend, stock split, recapitalization or any other similar transaction effected without

the Registrant's receipt of consideration which results in an increase in the number of outstanding shares of the Registrant's Common Stock.

- (2) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(c) and (h) of the Securities Act. The price per share and aggregate offering price are based upon the average of the high and low sales prices of the Registrant's Common Stock on July 31, 2009, as reported on the Nasdaq Global Select Market, which was \$37.08 per share.
- (3) Represents an additional 2,500,000 shares of Common Stock reserved for issuance under the 2003 Plan. On March 20, 2009, the Registrant's board of

directors amended and restated the 2003 Plan, subject to stockholder approval, to increase the number of shares of Common Stock authorized for issuance under the 2003 Plan by 2,500,000, from 8,000,000 shares to 10,500,000 shares, and adopted other amendments to the 2003 Plan.

At the Registrant's 2009 annual meeting of stockholders, held on May 14, 2009, the Registrant's stockholders approved such amended and restated 2003 Plan.

**INCORPORATION BY REFERENCE OF CONTENTS OF REGISTRATION
STATEMENT ON FORM S-8 NO. 333-135493**

This Registration Statement is being filed to increase the number of securities of the same class as other securities for which a Registration Statement of the Registrant on Form S-8 relating to the same employee benefit plan is effective. The Registrant previously registered shares of its Common Stock for issuance under the 2003 Plan under the Registration Statement on Form S-8 filed with the Securities and Exchange Commission, or SEC, on June 30, 2006 (File No. 333-135493). Pursuant to General Instruction E to Form S-8, this Registration Statement hereby incorporates by reference the contents of the Registration Statement referenced above.

PART II

Item 8. Exhibits.

**Exhibit
Number**

Description of Document

- | | |
|------|--|
| 4.1 | Form of Amended and Restated Certificate of Incorporation of Gen-Probe Incorporated. (1) |
| 4.2 | Certificate of Amendment of Amended and Restated Certificate of Incorporation of Gen-Probe Incorporated. (2) |
| 4.3 | Amended and Restated Bylaws of Gen-Probe Incorporated. (3) |
| 4.4 | Certificate of Elimination of Series A Junior Participating Preferred Stock of Gen-Probe Incorporated. (4) |
| 4.5 | Specimen Common Stock certificate. (1) |
| 5.1 | Opinion of Cooley Godward Kronish llp. |
| 23.1 | Consent of Independent Registered Public Accounting Firm. |
| 23.2 | Consent of Cooley Godward Kronish llp is contained in Exhibit 5.1 to this Registration Statement. |
| 24.1 | Power of Attorney is contained on the signature pages of this Registration Statement. |
| 99.1 | The 2003 Incentive Award Plan of Gen-Probe Incorporated, as adopted by the Board of Directors on March 20, 2009 and approved by the Registrant's stockholders on May 14, 2009. (5) |
| 99.2 | The 2003 Incentive Award Plan Form of Agreements and Grant Notices, as amended. (4) |
| 99.3 | The 2003 Incentive Award Plan Form of Restricted Stock Award Agreement and Grant Notice, as amended. (6) |

- (1) Filed as an exhibit to, and incorporated by reference herein from, the Registrant's Amendment No. 2 to

Registration
Statement on
Form 10 filed
with the SEC on
August 14,
2002.

- (2) Filed as an exhibit to, and incorporated by reference herein from, the Registrant's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2004 filed with the SEC on August 9, 2004.

 - (3) Filed as an exhibit to, and incorporated by reference herein from, the Registrant's Current Report on Form 8-K filed with the SEC on February 18, 2009.
-

- (4) Filed as an exhibit to, and incorporated by reference herein from, the Registrant's Annual Report on Form 10-K for the year ended December 31, 2006 filed with the SEC on February 23, 2007.

 - (5) Filed as an exhibit to, and incorporated by reference herein from, the Registrant's Current Report on Form 8-K filed with the SEC on May 19, 2009.

 - (6) Filed as an exhibit to, and incorporated by reference herein from, the Registrant's Current Report on Form 8-K filed with the SEC on December 6, 2005.
-

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 San Diego, State of California, on August 3, 2009.

GEN-PROBE INCORPORATED

By: /s/ Carl W. Hull
 Carl W. Hull
 President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Carl W. Hull and Herm Rosenman, and each of them, as his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, 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 SEC, granting unto said attorneys-in-fact 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 connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or either of them, or their 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, this Registration Statement has been signed by the following persons in the capacities and on the date indicated.

Signature	Title	Date
/s/ Carl W. Hull Carl W. Hull	President, Chief Executive Officer, and Director (<i>Principal Executive Officer</i>)	August 3, 2009
/s/ Herm Rosenman Herm Rosenman	Senior Vice President Finance and Chief Financial Officer (<i>Principal Financial Officer and Principal Accounting Officer</i>)	August 3, 2009
/s/ Henry L. Nordhoff Henry L. Nordhoff	Chairman of the Board of Directors	August 3, 2009
/s/ John W. Brown John W. Brown	Director	August 3, 2009
/s/ Raymond V. Dittamore Raymond V. Dittamore	Director	August 3, 2009

/s/ Armin M. Kessler

Director

August 3, 2009

Armin M. Kessler

Signature	Title	Date
/s/ John C. Martin, Ph.D. John C. Martin, Ph.D.	Director	August 3, 2009
/s/ Phillip M. Schneider Phillip M. Schneider	Director	August 3, 2009
/s/ Lucy Shapiro, Ph.D. Lucy Shapiro, Ph.D.	Director	August 3, 2009
/s/ Abraham D. Sofaer Abraham D. Sofaer	Director	August 3, 2009

EXHIBIT INDEX

Exhibit Number	Description of Document
4.1	Form of Amended and Restated Certificate of Incorporation of Gen-Probe Incorporated. (1)
4.2	Certificate of Amendment of Amended and Restated Certificate of Incorporation of Gen-Probe Incorporated. (2)
4.3	Amended and Restated Bylaws of Gen-Probe Incorporated. (3)
4.4	Certificate of Elimination of Series A Junior Participating Preferred Stock of Gen-Probe Incorporated. (4)
4.5	Specimen Common Stock certificate. (1)
5.1	Opinion of Cooley Godward Kronish llp.
23.1	Consent of Independent Registered Public Accounting Firm.
23.2	Consent of Cooley Godward Kronish llp is contained in Exhibit 5.1 to this Registration Statement.
24.1	Power of Attorney is contained on the signature pages of this Registration Statement.
99.1	The 2003 Incentive Award Plan of Gen-Probe Incorporated, as adopted by the Board of Directors on March 20, 2009 and approved by the Registrant's stockholders on May 14, 2009. (5)
99.2	The 2003 Incentive Award Plan Form of Agreements and Grant Notices, as amended. (4)
99.3	The 2003 Incentive Award Plan Form of Restricted Stock Award Agreement and Grant Notice, as amended. (6)
(1)	Filed as an exhibit to, and incorporated by reference herein from, the Registrant's Amendment No. 2 to Registration Statement on Form 10 filed with the SEC on August 14, 2002.
(2)	Filed as an exhibit to, and

incorporated by reference herein from, the Registrant's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2004 filed with the SEC on August 9, 2004.

(3) Filed as an exhibit to, and incorporated by reference herein from, the Registrant's Current Report on Form 8-K filed with the SEC on February 18, 2009.

(4) Filed as an exhibit to, and incorporated by reference herein from, the Registrant's Annual Report on Form 10-K for the year ended December 31, 2006 filed with the SEC on February 23, 2007.

(5) Filed as an exhibit to, and incorporated by reference herein from, the Registrant's Current Report on Form 8-K filed with the

SEC on May 19,
2009.

- (6) Filed as an exhibit to, and incorporated by reference herein from, the Registrant's Current Report on Form 8-K filed with the SEC on December 6, 2005.