

MINDSPEED TECHNOLOGIES, INC  
Form S-8  
August 07, 2012

As filed with the Securities and Exchange Commission on August 7, 2012.

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. Retirement Savings Plan**

**(Full Title of the Plan)**

**Brandi R. Steege**

**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)	600,000	\$2.64	\$1,584,000	\$182

- (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 of Common Stock reserved that may be issued for purposes of employer matching contributions under the Mindspeed Technologies, Inc. Retirement Savings 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 August 3, 2012, 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, 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. In addition, pursuant to Rule 416(c) under the Securities Act, this Registration Statement also covers an indeterminate amount of interests to be offered or sold pursuant to the Mindspeed Technologies, Inc. Retirement Savings Plan.

**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 11-K for the Mindspeed Technologies, Inc. Retirement Savings Plan for the year ended December 31, 2010, filed with the SEC on June 27, 2011;
- (b) Annual Report on Form 10-K of the Company for the fiscal year ended September 30, 2011, filed with the SEC on November 18, 2011;
- (c) 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;
- (d) 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); 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 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 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 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.
- 4.7 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.
- 4.8 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.
- 4.9 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.
- 4.10 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 (SEC File No. 001-31650).
- 5.1 Opinion of Wilson Sonsini Goodrich & Rosati, P.C.
- 5.2 Undertaking re Status of Favorable Determination Letter covering the Mindspeed Technologies, Inc. Retirement Savings Plan.

The Registrant has received a favorable determination or opinion letter from the Internal Revenue Service (the "IRS") concerning the qualification of the Mindspeed Technologies, Inc. Retirement Savings Plan (the "Plan") under Section 401(a) and related provisions of the Internal Revenue Code of 1986, as amended. The Registrant will submit any future material amendment to the Plan to the IRS with a request for a favorable determination that the Plan, as amended, continues to so qualify.

- 23.1 Consent of Deloitte & Touche LLP, independent registered public accounting firm.
- 23.2 Consent of Deloitte & Touche LLP, independent auditor.
- 23.3 Consent of Wilson Sonsini Goodrich & Rosati, P.C. (included in Exhibit 5.1 to this Registration Statement).
- 24.1 Power of Attorney of Directors (contained on the signature page of this Registration Statement).
- 24.2 Power of Attorney of the Employee Benefits Committee (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 7th day of August, 2012.

MINDSPEED TECHNOLOGIES, INC.

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

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**POWER OF ATTORNEY OF DIRECTORS**

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	August 6, 2012
Raouf Y. Halim	(Principal Executive Officer)	
/s/ Stephen N. Ananias	Senior Vice President and Chief Financial Officer (Principal Financial Officer and	August 6, 2012
Stephen N. Ananias	Principal Accounting Officer)	
/s/ Dwight W. Decker	Chairman of the Board	August 6, 2012
Dwight W. Decker		
/s/ Robert J. Conrad	Director	August 6, 2012
Robert J. Conrad		
/s/ Michael T. Hayashi	Director	August 6, 2012
Michael T. Hayashi		
/s/ Ming Louie	Director	August 6, 2012
Ming Louie		
/s/ Thomas A. Madden	Director	August 6, 2012
Thomas A. Madden		
/s/ Jerre L. Stead	Director	August 6, 2012
Jerre L. Stead		

**POWER OF ATTORNEY OF EMPLOYEE BENEFITS COMMITTEE**

Each of the undersigned members of the Employee Benefits Committee hereby constitutes and appoints Stephen N. Ananias and Brandi R. Steege, 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.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
/s/ Stephen N. Ananias	Member of Employee Benefits	August 6, 2012
Stephen N. Ananias	Committee	
/s/ Allison K. Garcia	Member of Employee Benefits	August 6, 2012
Allison K. Garcia	Committee	
/s/ Brandi R. Steege	Member of Employee Benefits	August 6, 2012
Brandi R. Steege	Committee	

**EXHIBIT INDEX**

<b>Exhibit Number</b>	<b>Description</b>
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