

PHOTRONICS INC
Form S-8
June 18, 2008

As filed with the Securities and Exchange Commission on June 18, 2008

Registration No.333 -

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

Form S-8

**REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

PHOTRONICS, INC.
(Exact name of registrant as specified in its charter)

CONNECTICUT
(State or other jurisdiction of
incorporation or organization)

06-0854886
(I.R.S. Employer
Identification No.)

15 Secor Road
Brookfield, CT 06804
(Address of Principal Executive Offices)

2007 Long Term Equity Incentive Plan
(Full title of the plan)

Richelle E. Burr
Associate General Counsel and Assistant Secretary
PHOTRONICS, INC.

15 Secor Road
Brookfield, CT 06804
(Name and address of agent for service)

(203) 775-9000
(Telephone number, including area code, of agent for service)

Indicate by check mark whether the registrant is a large accelerated filer , an accelerated filer or a smaller reporting company .

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 Amount to be Proposed maximum Proposed maximum Amount of

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| Registered | registered (1) | offering price per share (2) | aggregate offering price (2) | registration fee |
|-------------------------------|-----------------------|-------------------------------------|-------------------------------------|-------------------------|
| Common Stock, Par Value \$.01 | 3,000,000 | \$8.1 | 24,300,000 | \$955 |

(1) This Registration Statement relates to the registration of 3,000,000 shares of Common Stock, \$0.01 par value, of Photronics, Inc. (the [Company]) to be offered pursuant to the Company's 2007 Long Term Equity Incentive Plan (the [Plan]). In addition, pursuant to Rule 416(a) under the Securities Act of 1933 (the [Securities Act]), this Registration Statement also covers any additional shares of the common stock that become issuable under the Plan by reason of any stock dividend, stock split, recapitalization or other similar transaction(s) in accordance with anti-dilution provisions of the Plan.

(2) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457 (c) and (h) under the Securities Act of 1933, as amended (the [Securities Act]). The Proposed Maximum Offering Price is based on the average of the high and low sale prices of the Common Stock of the Registrant as reported on the NASDAQ Stock Market on June 17, 2008.

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PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. Plan Information.*

Item 2. Registrant Information and Employee Plan Annual Information.*

* Information required by Part I to be contained in the Section 10(a) prospectus is omitted from this Registration Statement in accordance with Rule 428 under the Securities Act and the [Note] to Part I of Form S-8.

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PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following information filed by Photronics, Inc. (the [Registrant] or [Photronics]) with the Securities and Exchange Commission (the [Commission]) is incorporated herein by reference:

(a) The Registrant's annual report on Form 10-K for the fiscal year ended October 28, 2007 (filed on January 11, 2008);

(b) The Registrant's quarterly reports on Form 10-Q for the fiscal quarter ended April 27, 2008 (filed on June 5, 2008), and January 27, 2008 (filed March 6, 2008).

(c) The Registrant's current reports on Form 8-K, filed May 14, 2008 and April 30, 2008.

(d) The description of the Registrant's common stock included in its Registration Statement on Form S-3, filed on June 14, 2005.

In addition, all documents filed by the Registrant with the Commission pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the [Exchange Act]) after the date of this Registration

Statement and 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 with the Commission. Any statement contained in a document incorporated by reference herein 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 such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities.

Not applicable; the class of securities to be offered is registered under Section 12 of the Exchange Act.

Item 5. Interests of Named Experts and Counsel.

None.

Item 6. Indemnification of Directors and Officers.

Under applicable Connecticut law, the Registrant shall provide for indemnification of its directors, officers, employees and agents. Applicable Connecticut law requires the Registrant to indemnify a director against judgments and other expenses of litigation when he is sued by reason of his being a director in any proceeding brought, other than on behalf of the corporation, if a director is successful on the merits in defense, or acted in good faith and in a manner reasonably believed to be in the best interests of the corporation, and in all other cases that his conduct was at least not opposed to the best interests of the corporation, or in a criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. In a proceeding brought on behalf of a corporation (a derivative action), a director is entitled to be indemnified by the corporation for reasonable expenses of litigation, if the director is finally adjudged not to have breached his duty to the corporation. In addition, a director is entitled to indemnification for both derivative and non-derivative actions, if a court determines, upon application, that the director is fairly and reasonably entitled to be indemnified. Finally, the Registrant maintains director and officer liability insurance which provides insurance for the Registrant's directors and officers in connection with claims brought against them in their capacity as such with the Registrant.

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Article Ninth of the Registrant's Certificate of Incorporation limits directors' monetary liability for actions or omissions made in good faith, which are later determined to be a breach of their duty as directors of the Registrant. Article Ninth does not eliminate or limit a director's liability for breaches of fiduciary duty for actions or omissions which (i) involved a knowing and culpable violation of law; (ii) enabled a director or an associate (as defined in the Act) to receive an improper personal economic gain; (iii) showed a lack of good faith and conscious disregard for his duty as a director under circumstances where the director was aware that his actions created an unjustifiable risk of serious injury to the Registrant; (iv) constituted a sustained and unexcused pattern of inattention that amounted to an abdication of his duty; or (v) involved the improper distribution of Registrant assets to its shareholders or an improper loan to an officer, director or 5% shareholder. Article Ninth also does not preclude suits for equitable relief, such as an injunction, nor would it shield directors from liability for violations of the federal securities laws. Moreover, Article Ninth does not limit the liability of directors for any act or omission that occurred prior to the date the Article became effective and does not limit the potential liability of officer-directors in their capacity as officers.

Item 7. Exemption from Registration Claimed.

Not Applicable.

Item 8. Exhibits.

The exhibits filed as part of this Registration Statement are set forth below in the Exhibits Index.

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 of 1933 (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 (or the most recent post-effective amendment thereto); 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 paragraphs (i) and (ii) above do 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 Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in this Registration Statement.

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(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 herein, 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 that 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 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the 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 person of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the 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 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

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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 Town of Brookfield, State of Connecticut, on the 18th day of June, 2008.

PHOTRONICS, INC.

By /s/ Richelle E. Burr
Richelle E. Burr
Associate General Counsel
and Assistant Secretary

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS that each person whose signature appears below constitutes and appoints Richelle E. Burr and Sean T. Smith, and each of them, his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, to act, without the other, for him and in his name, place and stead, in any and all capacities, to sign any or 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 Securities and Exchange Commission, granting unto said attorneys-in-fact and agents full power 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 that said attorneys-in-fact and agents, or any of them, their substitute or substitutes may lawfully do or cause to be done by virtue hereof.

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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/ Constantine S. Macricostas Constantine S. Macricostas | Chairman of the Board of Directors | June 18, 2008 |
| /s/ Michael J. Luttati Michael J. Luttati | Chief Executive Officer (Principal Executive Officer) and Director | June 18, 2008 |
| /s/ Sean T. Smith Sean T. Smith | Senior Vice President and Chief Financial Officer (Principal Financial and Accounting Officer) | June 18, 2008 |
| /s/ Walter M. Fiederowicz Walter M. Fiederowicz | Director | June 18, 2008 |
| /s/ Joseph A. Fiorita, Jr. Joseph A. Fiorita, Jr. | Director | June 18, 2008 |
| /s/ Willem D. Maris Willem D. Maris | Director | June 18, 2008 |
| /s/ George Macricostas | Director | June 18, 2008 |

George Macricostas

/s/ Mitchell G. Tyson
Mitchell G. Tyson

Director

June 18, 2008

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EXHIBITS INDEX

| Exhibit No. | Description |
|-------------|---|
| 3.1 | Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to the Registrant's Annual Report on Form 10-K for the fiscal year ended October 28, 2007 (Commission File Number 0-15451). |
| 3.2 | By-laws of the Registrant, (incorporated by reference to Exhibit 3.2 to the Registrant's Registration Statement on Form S-1, File Number 33-11694, which was declared effective by the Commission on March 10, 1987). |
| 4.1 | Photronics, Inc. 2007 Long Term Equity Incentive Plan, as approved, at the Annual Meeting of Shareholders on March 30, 2007. |
| 5.1 | Opinion of Richelle E. Burr, Esq. |
| 23.1 | Consent of Deloitte & Touche LLP. |
| 23.2 | Consent of Richelle E. Burr, Esq. (contained in Exhibit 5.1). |
| 24.1 | Power of Attorney (contained on the Signature Page of this Registration Statement). |

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