

MAXWELL TECHNOLOGIES INC  
Form S-8  
March 20, 2014

As filed with the Securities and Exchange Commission on March 20, 2014  
Registration No. 333-\_\_\_\_\_

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

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FORM S-8  
REGISTRATION STATEMENT  
Under  
The Securities Act of 1933

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

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Delaware  
(State or other jurisdiction  
of incorporation or organization)

95-2390133  
(I.R.S. Employer  
Identification No.)

3888 Calle Fortunada  
San Diego, California 92123  
(Addresses of principal executive offices, including zip code)

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Maxwell Technologies, Inc. 2013 Omnibus Equity Incentive Plan  
Maxwell Technologies, Inc. 2004 Employee Stock Purchase Plan  
(Full title of the Plans)

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John Warwick  
Interim President and Chief Executive Officer  
MAXWELL TECHNOLOGIES, INC.  
3888 Calle Fortunada  
San Diego, California 92123  
(Name and address of agent for service)

(858) 503-3300  
(Telephone number, including area code, of agent for service)

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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.

Large accelerated filer

Accelerated filer

x

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)	Proposed Maximum Offering Price per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, \$0.10 par value per share:				
2013 Omnibus Equity Incentive Plan	1,000,000	13.79(2)	\$13,730,000	\$1,768.42
2004 Employee Stock Purchase Plan	500,000	11.67(3)	\$5,835,000	\$751.55
Total	1,500,000	-	\$19,565,000	\$2,519.97

This Registration Statement shall also cover any additional shares of the Registrant's Common Stock which become issuable under the 2013 Omnibus Equity Incentive Plan (the "Omnibus Plan") and the 2004 Employee Stock (1)Purchase Plan (the "Purchase Plan") by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the receipt of consideration which results in an increase in the number of the outstanding shares of Common Stock of Maxwell Technologies, Inc. (the "Company" or the "Registrant").

The proposed maximum offering price per share and in the aggregate were estimated pursuant to Rule 457(c) and (2)(h) under the Securities Act of 1933, as amended (the "Securities Act"), solely for the purposes of calculating the registration fee based on the average of the high and low price per share of Common Stock on March 17, 2014 as quoted on the Nasdaq Global Market.

The proposed maximum offering price per share and in the aggregate were estimated pursuant to Rule 457(c) and (3)(h) under the Securities Act of 1933, as amended (the "Securities Act"), solely for the purposes of calculating the registration fee based on 85% of the average of the high and low price per share of Common Stock on March 17, 2014 as quoted on the Nasdaq Global Market. Pursuant to the Purchase Plan, the purchase price of the shares of the Registrar's Common Stock will be 85% of the lower of the fair market value of the Registrant's Common Stock on the first trading day of the offering period or the last day of the offering period.

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

The document(s) containing the information specified in this Part I will be sent or given to employees as specified by Rule 428(b)(1) (§230.428(b)(1)). Such documents need not be filed with the Commission either as part of this registration statement or as prospectuses or prospectus supplements pursuant to Rule 424 (§230.424). These documents and the documents incorporated by reference in the registration statement pursuant to Item 3 of Part II of this Form, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act. See Rule 428(a)(1) (§230.428(a)(1)).

PART II  
INFORMATION REQUIRED IN THE  
REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

The following documents of the Company filed with the Securities and Exchange Commission (the “Commission”) are incorporated herein by reference:

(a) The Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2013, filed with the Commission on February 20, 2014 (Commission File No. 001-15477); and

(b) All other reports filed pursuant to Section 13(a) or 15(d) of the Securities and Exchange Act of 1934, as amended (the “Exchange Act”) since the end of the fiscal year covered by the Company’s latest Annual Report referred to in (a) above; and

(c) The description of the Company’s Common Stock contained in its Registration Statement on Form 8-A filed with the Commission on March 8, 1983 (Commission File No. 000-10964), including any amendment or report filed for the purpose of updating such description.

All reports and definitive proxy or information statements filed pursuant to Section 13(a), 13(c), 14 and 15(d) of 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 hereby 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. Unless expressly incorporated into this Registration Statement, a report furnished but not filed on Form 8-K under the Exchange Act shall not be incorporated by reference into this Registration Statement.

Any statement contained herein or in a document incorporated or deemed to be 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 in any subsequently filed document which also is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such 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.

Item 5. Interests of Named Experts and Counsel

Not applicable.

Item 6. Indemnification of Directors and Officers

Section 145(a) of the Delaware General Corporation Law (the “DGCL”) provides in relevant part that a 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 the 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, partnership, joint venture, trust or other enterprise, against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person 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 reasonable cause to believe the person’s conduct was unlawful.” With respect to derivative actions, Section 145(b) of the DGCL provides in relevant part that a 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 the corporation to procure a judgment in its favor... [by reason of his service in one of the capacities specified in the preceding sentence] against expenses (including attorneys’ fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the

person reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of 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 of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.”

The Registrant’s Amended and Restated Certificate of Incorporation provides for the indemnification of directors to the

fullest extent permissible under Delaware law.

The Registrant's Bylaws provides for the indemnification of officers, directors and third parties acting on behalf of the Registrant if such person acted in good faith and in a manner reasonably believed to be in and not opposed to the best interest of the Registrant, and, with respect to any criminal action or proceeding, the indemnified party had no reason to believe his or her conduct was unlawful.

Item 7. Exemption from Registration Claimed

Not applicable.

Item 8. Exhibits

See the attached Exhibit Index at page 6, which is incorporated herein by reference.

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 – 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 Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective 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 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; (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 Registrant's 2013 Omnibus Equity Incentive Plan and 2004 Employee Stock Purchase Plan.

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 indemnification provisions summarized in Item 6 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 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, 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 this 20th day of March 2014.

MAXWELL TECHNOLOGIES, INC.

By: /S/ JOHN WARWICK  
 John Warwick  
 Interim President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS:

That the undersigned officers and directors of Maxwell Technologies, Inc., a Delaware corporation, do hereby constitute and appoint John Warwick and Kevin S. Royal, and either of them, the lawful attorneys-in-fact and agents with full power and authority to do any and all acts and things and to execute any and all instruments which said attorneys and agents, and either one of them, determine may be necessary or advisable or required to enable said corporation to comply with the Securities Act, and any rules or regulations or requirements of the Commission in connection with this Registration Statement. Without limiting the generality of the foregoing power and authority, the powers granted include the power and authority to sign the names of the undersigned officers and directors in the capacities indicated below to this Registration Statement, to any and all amendments, both pre-effective and post-effective, and supplements to this Registration Statement, and to any and all instruments or documents filed as part of or in conjunction with this Registration Statement or amendments or supplements thereof, and each of the undersigned hereby ratifies and confirms all that said attorneys and agents, or either one of them, shall do or cause to be done by virtue hereof. This Power of Attorney may be signed in several counterparts.

IN WITNESS WHEREOF, each of the undersigned has executed this Power of Attorney as of the date indicated. Pursuant to the requirements of the Securities Act, this Registration Statement has been signed below by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ JOHN WARWICK John Warwick	Interim President and Chief Executive Officer (Principal Executive Officer)	March 20, 2014
/s/ KEVIN S. ROYAL Kevin S. Royal	Senior Vice President, Chief Financial Officer, Treasurer and Secretary (Principal Financial and Accounting Officer)	March 20, 2014
/s/ MARK ROSSI Mark Rossi	Director	March 20, 2014
/s/ ROBERT L. GUYETT Robert L. Guyett	Director	March 20, 2014
/s/ JOSÉ CORTES José Cortes	Director	March 20, 2014



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/s/ BURKHARD GOESCHEL Burkhard Goeschel	Director	March 20, 2014
/s/ ROGER HOWSMON Roger Howsmon	Director	March 20, 2014
/s/ YON YOON JORDEN Yon Yoon Jordan	Director	March 20, 2014
/s/ DAVID SCHLOTTERBECK David Schlotterbeck	Director	March 20, 2014

EXHIBIT INDEX

Exhibit Number	Description of Document
4.1	Instruments Defining the Rights of Stockholders. Reference is made to the Company's Registration Statement on Form 8-A filed with the Commission on March 8, 1983 (Commission File No. 000-10964), including any amendments and exhibits thereto, which is incorporated by reference pursuant to Item 3(c) of this Registration Statement.
4.2	Maxwell Technologies, Inc. 2013 Omnibus Equity Incentive Plan, as approved (incorporated by reference to Appendix "A" of the Company's Proxy Statement for the 2013 Annual Meeting of Stockholders filed with the Commission on October 30, 2013).
4.3	Maxwell Technologies, Inc. 2004 Employee Stock Purchase Plan, as amended and restated (incorporated by reference to Appendix "B" of the Company's Proxy Statement for the 2013 Annual Meeting of Stockholders filed with the Commission on October 30, 2013).
5.1	Opinion and consent of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP.
23.1	Consent of BDO USA LLP, Independent Registered Public Accountants.
23.2	Consent of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP is contained in Exhibit 5.1.
24.1	Power of Attorney. Reference is made to page 5 of this Registration Statement.