

NETWORK APPLIANCE INC

Form S-8

February 25, 2008

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**UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933
NETWORK APPLIANCE, INC.**

(Exact name of registrant as specified in its charter)

Delaware
(State of Incorporation)

77-0307520
(I.R.S. Employer Identification No.)

**495 East Java Drive,
Sunnyvale, California 94089**
(Address of principal executive offices)

ONARO, INC. AMENDED AND RESTATED 2002 STOCK OPTION AND INCENTIVE PLAN
(Full title of the plan)

**Daniel J. Warmenhoven
Chief Executive Officer and Director
Network Appliance, Inc.
495 East Java Drive,
Sunnyvale, California 94089
(408) 822-6000**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Steven E. Bochner, Esq.
Wilson Sonsini Goodrich & Rosati, P. C.
650 Page Mill Road
Palo Alto, CA 94304
(650) 493-9300

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)	Proposed Maximum Offering Price Per Share (2)	Proposed Maximum Aggregate Offering Price (2)	Amount of Registration Fee
Common Stock (par value \$0.001) issuable under the Onaro, Inc. Amended and Restated 2002 Stock Option and Incentive Plan	1,000,171	\$ 13.82/\$21.44	\$ 15,282,612.88	\$600.61

- (1) Pursuant to Rule 416(a) of the Securities Act of 1933, as amended (the Securities Act), this Registration Statement shall also cover any additional shares of the Registrant s common stock that became issuable under the applicable plan by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the receipt of consideration that increases the number of outstanding shares of registrant s common stock. Stock awards outstanding under the Onaro, Inc. Amended and Restated 2002 Stock Option and Incentive Plan were assumed by the Registrant following the effectiveness of the merger of Tottenham Merger Corp., a Delaware corporation and wholly-owned subsidiary of the Registrant (Tottenham), with and into Onaro, Inc., a Delaware corporation (Onaro), pursuant to the Agreement and Plan of Merger dated as of December 7, 2007, by and among the Registrant, Onaro, Tottenham, and Amnon Shoham as stockholder representative.
 - (2) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(h) and Rule 457(c). The price per share and aggregate offering price are based upon (i) for the assumed outstanding options, a weighted average exercise price of \$ 13.82 per share for the outstanding options, and (ii) for the assumed outstanding restricted stock units, an assumed price of \$21.44 per share, which is the average of the high and low prices of the Comman Stock on February 15, 2008, as quoted on the Nasdaq Global Select Market.
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PART I
INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. Plan Information.

The documents containing the information specified in this Item 1 will be sent or given to employees, officers, directors or others as specified by Rule 428(b)(1). In accordance with the rules and regulations of the Securities and Exchange Commission (the Commission) and the instructions to Form S-8, such documents are not being filed with the Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424.

Item 2. Registration Information and Employee Plan Annual Information.

The documents containing the information specified in this Item 2 will be sent or given to employees, officers, directors or others as specified by Rule 428(b)(1). In accordance with the rules and regulations of the Commission and the instructions to Form S-8, such documents are not being filed with the Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424. Such documents, together with the documents incorporated by reference herein pursuant to Item 3 of Part II of this Registration Statement on Form S-8, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act, and are available upon written or oral request: Network Appliance, Inc., Attn: General Counsel, 495 East Java Drive, Sunnyvale, CA 94089, Tel: 408.822.6000.

PART II
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

Network Appliance, Inc. (the Registrant) hereby incorporates by reference into this Registration Statement the following documents previously filed with the Commission (excluding any portions of such documents that have been furnished but not filed for purposes of the Securities Exchange Act of 1934, as amended (the Exchange Act)):

- (a) The Registrant's Annual Report on Form 10-K for the fiscal year ended April 27, 2007 filed with the Commission on June 26, 2007;
 - (b) The Registrant's Quarterly Reports on Form 10-Q for the quarter ended July 27, 2007 filed with the Commission on September 5, 2007, and for the quarter ended October 26, 2007 filed with the Commission on December 4, 2007;
 - (c) The Registrant's Current Reports on Form 8-K filed with the Commission on May 30, 2007, July 20, 2007, August 15, 2007, August 17, 2007, August 23, 2007, October 12, 2007, November 8, 2007, December 5, 2007, February 1, 2008 and February 7, 2008.
 - (d) The description of the Registrant's Common Stock contained in the Registrant's Registration Statement on Form 8-A filed with the Commission on November 1, 1995 (File No. 000-27130).
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All documents filed pursuant to Section 13(a), 13(c), 14 or 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 de-registers 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. Any statement contained 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 herein or 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 of the Delaware General Corporation Law authorizes a court to award or a corporation's board of directors to grant indemnification to directors and officers in terms sufficiently broad to permit the indemnification under some circumstances for liabilities (including reimbursement for expenses incurred) arising under the Securities Act. Article IX of the Certificate of Incorporation of the Registrant provides that, subject to Delaware law, its directors will not be personally liable for monetary damages for breach of their fiduciary duties to the Registrant and its stockholders. This provision does not eliminate any director's fiduciary duties and in appropriate circumstances, equitable remedies such as injunctive or other forms of non-monetary relief will remain available under Delaware law. The provision also does not affect a director's responsibilities under any other law, such as the federal securities laws or state or federal environmental laws.

Article VII of the Registrant's Bylaws provides for indemnification of its directors and officers to the fullest extent authorized by Delaware General Corporation Law. The Registrant's Bylaws also provide that:

The Registrant is required to advance the expenses, as incurred, of any such individual in connection with defending a proceeding, action or suit by reason of such individual's serving on behalf of and at the Registrant's request, except that such officer or director shall undertake to repay such advances if it is ultimately determined that such person is not entitled to indemnification.

The rights conferred in the bylaws are not exclusive, and the Registrant is authorized to enter into indemnification arrangements with any person other than a director who is made a party to any action, suit or proceedings by reason of the fact that he is or was an officer, employee or other agent of the Registrant.

The Registrant may not retroactively amend the Bylaw provisions to reduce its indemnification obligations to its directors, officers, employees and agents.

The Registrant's policy is to enter into separate indemnification agreements with each of its directors and executive officers that provide the maximum indemnity allowed to directors and executive officers by Section 145 of the Delaware General Corporation Law and which allow for certain additional procedural protections. The Registrant also maintains directors and officers insurance to insure such persons against certain liabilities.

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Item 7. Exemption from Registration Claimed

Not applicable.

Item 8. Exhibits

Exhibit

Number

Documents

- | | |
|------|--|
| 4.1 | Onaro, Inc. Amended and Restated 2002 Stock Option and Incentive Plan (including Appendix Israeli Taxpayers) |
| 5.1 | Opinion of Wilson Sonsini Goodrich & Rosati, P.C. |
| 23.1 | Consent of Independent Registered Public Accounting Firm |
| 23.2 | Consent of Wilson Sonsini Goodrich & Rosati, P.C. is contained in Exhibit 5.1 to this Registration Statement |
| 24 | Power of Attorney is contained on the Signature Page |

In accordance with the requirements of Item 8(b) of Part II of Form S-8, the Registrant will submit or has submitted the Onaro, Inc. Amended and Restated 2002 Stock Option and Incentive Plan (the Plan), and any amendments thereto, to the Internal Revenue Service (the IRS) in a timely manner and has made or will make all changes required by the IRS to qualify the Plan.

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;

(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 (a)(1)(i) and (a)(1)(ii) of this section 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.

(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.

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(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 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 Registrant pursuant to the provisions described in Item 6 above, 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.

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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 Sunnyvale, State of California, on February 21, 2008.

Network Appliance, Inc.

By: /s/ DANIEL J. WARMENHOVEN
Daniel J. Warmenhoven

Title: Chief Executive Officer and Director

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KNOW ALL PERSONS BY THESE PRESENT, that each person whose signature appears below constitutes and appoints Daniel J. Warmenhoven and Steven J. Gomo, and each of them, as his true and lawful attorneys-in-fact and agents, with full power 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 on Form S-8, 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, 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 might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his substitutes, may lawfully do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed below by the following persons on behalf of the Company and in the capacities and on the dates indicated:

Signatures	Title	Date
/s/ DANIEL J. WARMENHOVEN (Daniel J. Warmenhoven)	Chief Executive Officer, Director (Principal Executive Officer)	February 21, 2008
/s/ DONALD T. VALENTINE (Donald T. Valentine)	Chairman of the Board, Director	February 20, 2008
/s/ STEVEN J. GOMO (Steven J. Gomo)	Executive Vice President of Finance and Chief Financial Officer	February 21, 2008
/s/ MARK LESLIE (Mark Leslie)	Director	February 21, 2008
/s/ CAROL A. BARTZ (Carol A. Bartz)	Director	February 19, 2008
/s/ NICHOLAS G. MOORE (Nicholas G. Moore)	Director	February 13, 2008
/s/ GEORGE T. SHAHEEN (George T. Shaheen)	Director	February 13, 2008
/s/ ROBERT T. WALL (Robert T. Wall)	Director	February 21, 2008
/s/ JEFFRY R. ALLEN (Jeffry R. Allen)	Director	February 21, 2008
/s/ ALAN EARHART (Alan Earhart)	Director	February 16, 2008

/s/ EDWARD KOZEL

February 21, 2008

Director

(Edward Kozel)

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EXHIBIT INDEX

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5.1	Opinion of Wilson Sonsini Goodrich & Rosati, P.C.
23.1	Consent of Independent Registered Public Accounting Firm
23.2	Consent of Wilson Sonsini Goodrich & Rosati, P. C., is contained in Exhibit 5.1 to this Registration Statement
24	Power of Attorney is contained on the Signature Page