

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

FORM S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

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

Delaware	33-1229046
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
9805 Northcross Center Court, Suite A Huntersville, NC	28078
(Address of principal executive offices)	(Zip Code)

AKOUSTIS TECHNOLOGIES, INC. 2018 STOCK INCENTIVE PLAN
(Full title of the plan)

Jeffrey B. Shealy
Chief Executive Officer
Akoustis Technologies, Inc.
9805 Northcross Center Court, Suite A
Huntersville, NC 28078
(Name and address of agent for service)

(704) 997-5735
(Telephone number, including area code, of agent for service)

Copy to:

Sean M. Jones
Coleman Wombwell
K&L Gates LLP
300 South Tryon Street, Suite 1000
Charlotte, North Carolina 28202
(704) 331-7400

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer
Non-accelerated filer

Accelerated filer
Smaller reporting company
Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards pursuant to Section 7(a)(2)(B) of the Securities Act.

EXPLANATORY NOTE

This Registration Statement on Form S-8 is being filed by Akoustis Technologies, Inc. (the "Company" or "Registrant") to register an additional 6,000,000 shares of the Company's common stock, par value \$0.001 per share (the "Common Stock"), for offer and sale under the Akoustis Technologies, Inc. 2018 Stock Incentive Plan, as amended (the "Plan"), pursuant to an amendment to the Plan approved by the Company's stockholders on November 10, 2022 (the "Plan Amendment"). After taking into account the shares added by the Plan Amendment, the aggregate number of shares of Common Stock that may be issued under the Plan is 12,000,000, which includes 3,000,000 shares of Common Stock registered under the Registration Statement on Form S-8, File No. 333-235665, filed with the Securities and Exchange Commission (the "SEC") on November 4, 2019 (the "2019 Registration Statement") and 3,000,000 shares of Common Stock previously registered under the Registration Statement on Form S-8, File No. 333-228451, filed with the SEC on November 16, 2018 (together with the 2019 Registration Statement, the "Prior Registration Statements"), plus any shares subject to any award granted under the Company's previous compensation plans that are forfeited, cancelled, terminated expire or lapse for any reason without the issuance of shares or pursuant to which such shares are reacquired by the Company.

In accordance with Instruction E of Form S-8, the content of the Prior Registration Statements is incorporated herein by reference and made a part of this Registration Statement on Form S-8.

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents have been filed by the Company with the SEC and are incorporated herein by reference:

- Annual Report on [Form 10-K](#) for the fiscal year ended June 30, 2022, filed with the SEC on September 12, 2022;
- Quarterly Report on [Form 10-Q](#) for the quarter ended September 30, 2022, filed with the SEC on November 14, 2022;
- Current Reports on Form 8-K, filed with the SEC on [July 11, 2022](#), and [November 14, 2022](#), and
- The description of the Company's Common Stock contained in the Company's Registration Statement on Form 8-A, originally filed with the SEC pursuant to Section 12(g) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), on March 10, 2017 (File No. [001-38029](#)), including any further amendment or report filed hereafter for the purpose of updating such description.

All reports and other documents filed by the Company pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, after the date hereof, 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 herein and to be part hereof from the date of filing of such reports and documents. The Company is not incorporating by reference any reports or documents or portions thereof that are not considered to be "filed" with the SEC.

Any statement contained herein or 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 herein by reference modifies or supersedes such earlier 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.

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Item 8. Exhibits.

Exhibit Number	Description
4.1	Articles of Conversion of the Company, as filed with the Nevada Secretary of State on December 15, 2016 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the SEC on December 16, 2016)
4.2	Certificate of Conversion of the Company, as filed with the Delaware Secretary of State on December 15, 2016 (incorporated by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K filed with the SEC on December 16, 2016)
4.3	Certificate of Incorporation, as filed with the Delaware Secretary of State on December 15, 2016 (incorporated by reference to Exhibit 3.3 to the Company's Current Report on Form 8-K filed with the SEC on December 16, 2016)
4.4	Certificate of Amendment to the Certificate of Incorporation, as filed with the Delaware Secretary of State on November 4, 2019 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the SEC on November 6, 2019)
4.5	Certificate of Amendment to the Certificate of Incorporation, as filed with the Delaware Secretary of State on November 10, 2022 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the SEC on November 14, 2022)
4.6	Amended and Restated Bylaws of the Company (incorporated by reference to Exhibit 3.5 to the Company's Quarterly Report on Form 10-Q filed with the SEC on May 1, 2020)
4.7	Akoustis Technologies, Inc. 2018 Stock Incentive Plan (incorporated by reference to Appendix A to the Proxy Statement for the Company's 2018 Annual Meeting of Stockholders filed with the SEC on September 18, 2018)
4.8	Form of Restricted Stock Unit Award Agreement under the Akoustis Technologies, Inc. 2018 Stock Incentive Plan (incorporated by reference to Exhibit 4.10 to the Company's Registration Statement on Form S-8 filed with the SEC on November 16, 2018)
4.9	Form of Performance-Based Restricted Stock Unit Award Agreement under the Akoustis Technologies, Inc. 2018 Stock Incentive Plan (incorporated by reference to Exhibit 4.11 to the Company's Registration Statement on Form S-8 filed with the SEC on November 16, 2018)
4.10	Form of Nonqualified Option Award Agreement under the Akoustis Technologies, Inc. 2018 Stock Incentive Plan (incorporated by reference to Exhibit 4.12 to the Company's Registration Statement on Form S-8 filed with the SEC on November 16, 2018)
4.11	First Amendment to 2018 Stock Incentive Plan (incorporated by reference to Appendix B of the Company's definitive proxy statement for its 2019 Annual Meeting of Stockholders, filed September 24, 2019)
4.12	Second Amendment to 2018 Stock Incentive Plan (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the SEC on November 14, 2022)
5.1	Opinion of K&L Gates LLP, filed herewith
23.1	Consent of Marcum LLP, filed herewith
23.2	Consent of K&L Gates LLP (contained in Exhibit 5.1 of this Registration Statement and filed herewith)
24.1	Power of Attorney (included on the signature page of this Registration Statement)
107	Filing Fee Table

SIGNATURES

Pursuant to the requirements of the Securities Act, the Company 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 Huntersville, State of North Carolina, on January 4, 2023.

AKOUSTIS TECHNOLOGIES, INC.

By: /s/ Jeffrey B. Shealy
 Jeffrey B. Shealy
 President and Chief Executive Officer

POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints Jeffrey B. Shealy and Kenneth E. Boller, and each of them, his true and lawful attorney-in-fact and agent, each with full power of substitution and resubstitution, severally, 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 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 or their or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof. This power of attorney may be executed in counterparts.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed below by the following persons in the capacities indicated, in each case on January 4, 2023:

<u>Signature</u>	<u>Title</u>
<u>/s/ Jeffrey B. Shealy</u> Jeffrey B. Shealy	President and Chief Executive Officer (Principal Executive Officer), Director
<u>/s/ Kenneth E. Boller</u> Kenneth E. Boller	Chief Financial Officer (Principal Financial Officer and Accounting Officer)
<u>/s/ Arthur E. Geiss</u> Arthur E. Geiss	Co-Chairman of the Board
<u>/s/ Jerry D. Neal</u> Jerry D. Neal	Co-Chairman of the Board
<u>/s/ Steven P. DenBaars</u> Steven P. DenBaars	Director
<u>/s/ Jeffrey K. McMahon</u> Jeffrey K. McMahon	Director
<u>/s/ Suzanne B. Rudy</u> Suzanne B. Rudy	Director
<u>/s/ J. Michael McGuire</u> J. Michael McGuire	Director



January 4, 2023

Akoustis Technologies, Inc.
9805 Northcross Center Court, Suite A
Huntersville, NC 28078

Ladies and Gentlemen:

We have acted as special counsel to Akoustis Technologies, Inc., a Delaware corporation (the “Company”), in connection with the Registration Statement on Form S-8 (the “Registration Statement”) filed on the date hereof with the U.S. Securities and Exchange Commission (the “SEC”) under the Securities Act of 1933, as amended (the “Securities Act”), and the rules and regulations promulgated thereunder for the registration of 6,000,000 shares (the “Shares”) of Common Stock, par value \$0.001 per share (the “Common Stock”), of the Company, issuable pursuant to the Akoustis Technologies, Inc. 2018 Stock Incentive Plan, as amended (the “Plan”).

This opinion is being furnished in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act.

For purposes of rendering that opinion, we have examined (i) the Registration Statement, (ii) the Company’s Certificate of Incorporation, as amended through the date hereof, (iii) its Bylaws, (iv) the stock ledger; (v) the corporate action of the Company’s Board of Directors which authorizes the registration of the Shares on the Registration Statement and (vi) the Plan, and we also have made such investigation of law as we have deemed appropriate. We have examined and relied upon certificates of public officials and such other documents and instruments as we have deemed necessary or advisable for the purpose of rendering our opinion. For the purposes of this opinion letter, we have made assumptions that are customary in opinion letters of this kind, including the assumptions that each document submitted to us is accurate and complete, that each such document that is an original is authentic, that each such document that is a copy conforms to an authentic original, that all signatures on each such document are genuine and that the Company is and shall remain at all times a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware. We have further assumed the legal capacity of natural persons, and we have assumed that each party to the documents we have examined or relied on has the legal capacity or authority and has satisfied all legal requirements that are applicable to that party to the extent necessary to make such documents enforceable against that party. We have not verified any of those assumptions.

K&L GATES LLP
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Akoustis Technologies, Inc.
January 4, 2023
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In rendering our opinion below, we also have assumed that: (a) the Company will have sufficient authorized and unissued shares of Common Stock at the time of each issuance of a Share under the Plan; (b) the Shares will be evidenced by appropriate certificates, duly executed and delivered, or the Company’s Board of Directors will adopt a resolution, providing that all Shares shall be uncertificated in accordance with Section 158 of the Delaware General Corporation Law (the “DGCL”) prior to their issuance; (c) the issuance of each Share will be duly noted in the Company’s stock ledger upon its issuance; (d) the Plan constitutes the valid and binding agreement of the Company, enforceable against the Company in accordance with its terms; (e) the Company will receive consideration for each Share at least equal to the par value of such share of Common Stock and in the amount required by the Plan (or the award agreement issued thereunder); and (f) prior to the issuance of any Shares under the Plan, the Company’s Board of Directors will duly authorize each award granted under the Plan pursuant to an award agreement and in accordance with the DGCL and the Plan.

Our opinion set forth below is limited to the DGCL and reported judicial decisions interpreting the DGCL.

Based upon and subject to the foregoing, it is our opinion that the Shares are duly authorized for issuance by the Company pursuant to, and on the terms set forth in, the Plan and, when, and if, issued pursuant to the terms of the Plan and the applicable award agreement will be validly issued, fully paid, and non-assessable.

We hereby consent to the filing of this opinion letter with the SEC as Exhibit 5.1 to the Registration Statement. In giving this consent, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the SEC promulgated thereunder.

Very truly yours,

/s/ K&L Gates LLP

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT

We consent to the incorporation by reference in this Registration Statement of Akoustis Technologies, Inc. on Form S-8 of our report dated September 12, 2022, with respect to our audits of the consolidated financial statements of Akoustis Technologies, Inc. as of June 30, 2022 and 2021 and for each of the two years in the period ended June 30, 2022, appearing in the Annual Report on Form 10-K of Akoustis Technologies, Inc. for the year ended June 30, 2022.

/s/ Marcum llp

Marcum llp
New York, NY
January 4, 2023

Calculation of Filing Fee Tables

Form S-8
(Form Type)

Akoustis Technologies, Inc.
(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered and Carry Forward Securities

Security Type	Security Class Title	Fee Calculation or Carry Forward Rule	Amount Registered ⁽¹⁾	Proposed Maximum Offering Price Per Unit ⁽²⁾	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Equity	Common Stock, par value \$0.01 per share	Rule 457(c) and (h)	6,000,000 ⁽³⁾	\$ 2.815	\$ 16,890,000.00	0.00011020	\$ 1,861.28
—	—	—	—	—	—	—	—
—	—	—	—	—	—	—	—
	Total Offering Amounts				\$ 16,890,000.00		\$ 1,861.28
	Total Fee Offsets						—
	Net Fees Due						\$ 1,861.28

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement also covers such indeterminate number of additional shares of Akoustis Technologies, Inc.’s (the “Registrant”) common stock, par value \$0.001 per share (“Common Stock”) as is necessary to eliminate any dilutive effect of any future stock split, stock dividend or similar transaction.
- (2) Calculated in accordance with Rule 457(c) and (h) under the Securities Act of 1933 solely for the purpose of calculating the registration fee, which is based on the average of the high and low market prices of the shares of common stock of the Registrant as reported on the Nasdaq Stock Market LLC on December 30, 2022
- (3) Represents an additional 6,000,000 shares of Common Stock issuable under the Akoustis Technologies, Inc. 2018 Stock Incentive Plan, as amended, which increase in shares of Common Stock was approved by the Registrant’s stockholders at its Annual Meeting of Stockholders on November 10, 2022.