

GEN PROBE INC  
Form S-8  
August 03, 2011

As filed with the Securities and Exchange Commission on August 3, 2011

Registration No. 333-

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

**FORM S-8**  
**REGISTRATION STATEMENT**  
*UNDER*  
*THE SECURITIES ACT OF 1933*

**GEN-PROBE INCORPORATED**

(Exact Name Of Registrant As Specified In Its Charter)

**Delaware**  
(State or Other Jurisdiction of  
Incorporation or Organization)

**33-0044608**  
(I.R.S. Employer  
Identification No.)

**10210 Genetic Center Drive**

**San Diego, California**  
(Address Of Principal Executive Offices)

**92121**  
(Zip Code)

**The 2003 Incentive Award Plan of Gen-Probe Incorporated**

(Full Title Of The Plan)

**Carl W. Hull**

**President and Chief Executive Officer**

**Gen-Probe Incorporated**

**10210 Genetic Center Drive**

**San Diego, California 92121-4362**

**Telephone: (858) 410-8000**

(Name, Address, Including Zip Code, And Telephone Number, Including Area Code, Of Agent For Service)

*Copy to:*

**Steven M. Przesmicki, Esq.**

**Cooley LLP**

**4401 Eastgate Mall**

**San Diego, California 92121-9109**

**Telephone: (858) 550-6000**

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):

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Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/> (Do not check if a smaller reporting company)	Smaller reporting company	<input type="checkbox"/>

**CALCULATION OF REGISTRATION FEE**

<b>Title of Securities to be Registered</b>	<b>Amount to be Registered (1)</b>	<b>Proposed Maximum Offering Price Per Share (2)</b>	<b>Proposed Maximum Aggregate Offering Price (2)</b>	<b>Amount of Registration Fee</b>
Common Stock, par value \$0.0001 per share	2,500,000 shares (3)	\$60.14	\$150,350,000	\$17,455.64

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended, or the Securities Act, this Registration Statement shall also cover any additional shares of the Registrant's common stock, par value \$0.0001 per share, or Common Stock, which become issuable under The 2003 Incentive Award Plan of Gen-Probe Incorporated, as amended, or the 2003 Plan, by reason of any stock dividend, stock split, recapitalization or any other similar transaction effected without the Registrant's receipt of consideration which results in an increase in the number of outstanding shares of the Registrant's Common Stock.
- (2) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(c) and (h) of the Securities Act. The price per share and aggregate offering price are based upon the average of the high and low sales prices of the Registrant's Common Stock on July 29, 2011, as reported on the Nasdaq Global Select Market, which was \$60.14 per share.
- (3) Represents an additional 2,500,000 shares of Common Stock reserved for issuance under the 2003 Plan. On March 9, 2011, the Registrant's board of directors amended and restated the 2003 Plan, subject to stockholder approval, to increase the number of shares of Common Stock authorized for issuance under the 2003 Plan by 2,500,000, from 10,500,000 shares to 13,000,000 shares, and adopted other amendments to the 2003 Plan. At the Registrant's 2011 annual meeting of stockholders, held on May 19, 2011, the Registrant's stockholders approved such amended and restated 2003 Plan.

**INCORPORATION BY REFERENCE OF CONTENTS OF REGISTRATION**

**STATEMENT ON FORM S-8 NO. 333-135493**

This Registration Statement is being filed to increase the number of securities of the same class as other securities for which a Registration Statement of the Registrant on Form S-8 relating to the same employee benefit plan is effective. The Registrant previously registered shares of its Common Stock for issuance under the 2003 Plan under the Registration Statement on Form S-8 filed with the Securities and Exchange Commission, or SEC, on June 30, 2006 (File No. 333-135493). Pursuant to General Instruction E to Form S-8, this Registration Statement hereby incorporates by reference the contents of the Registration Statement referenced above.

**PART II**

**Item 8. Exhibits.**

<b>Exhibit Number</b>	<b>Description of Document</b>
4.1	Form of Amended and Restated Certificate of Incorporation of Gen-Probe Incorporated. (1)
4.2	Certificate of Amendment of Amended and Restated Certificate of Incorporation of Gen-Probe Incorporated. (2)
4.3	Amended and Restated Bylaws of Gen-Probe Incorporated. (3)
4.4	Certificate of Elimination of Series A Junior Participating Preferred Stock of Gen-Probe Incorporated. (4)
4.5	Specimen Common Stock certificate. (1)
5.1	Opinion of Cooley LLP.
23.1	Consent of Independent Registered Public Accounting Firm.
23.2	Consent of Cooley LLP is contained in Exhibit 5.1 to this Registration Statement.
24.1	Power of Attorney is contained on the signature page of this Registration Statement.
99.1	The 2003 Incentive Award Plan of Gen-Probe Incorporated, as adopted by the Board of Directors on March 9, 2011 and approved by the Registrant's stockholders on May 19, 2011. (5)
99.2	The 2003 Incentive Award Plan Form of Agreements and Grant Notices, as amended. (4)
99.3	The 2003 Incentive Award Plan Form of Restricted Stock Award Agreement and Grant Notice, as amended. (6)
99.4	The 2003 Incentive Award Plan Form of Performance Stock Award Grant Notice and Performance Stock Award Agreement. (7)

- (1) Filed as an exhibit to, and incorporated by reference herein from, the Registrant's Amendment No. 2 to Registration Statement on Form 10 (File No. 000-49834) filed with the SEC on August 14, 2002.
- (2) Filed as an exhibit to, and incorporated by reference herein from, the Registrant's Quarterly Report on Form 10-Q (File No. 001-31279) for the quarterly period ended June 30, 2004 filed with the SEC on August 9, 2004.
- (3) Filed as an exhibit to, and incorporated by reference herein from, the Registrant's Current Report on Form 8-K filed with the SEC on February 18, 2009.
- (4) Filed as an exhibit to, and incorporated by reference herein from, the Registrant's Annual Report on Form 10-K for the year ended December 31, 2006 filed with the SEC on February 23, 2007.
- (5) Filed as an exhibit to, and incorporated by reference herein from, the Registrant's Current Report on Form 8-K filed with the SEC on May 25, 2011.
- (6) Filed as an exhibit to, and incorporated by reference herein from, the Registrant's Current Report on Form 8-K filed with the SEC on December 6, 2005.
- (7) Filed as an exhibit to, and incorporated by reference herein from, the Registrant's Current Report on Form 8-K with respect to Items 5.02 and 9.01 filed with the SEC on February 16, 2010.

**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 San Diego, State of California, on August 3, 2011.

**GEN-PROBE INCORPORATED**

By: /s/ Carl W. Hull  
Carl W. Hull

President and Chief Executive Officer

**POWER OF ATTORNEY**

**KNOW ALL PERSONS BY THESE PRESENTS**, that each person whose signature appears below constitutes and appoints Carl W. Hull and Herm Rosenman, and each of them, as his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and 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 SEC, 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 or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or either of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

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 date indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
/s/ Carl W. Hull	President, Chief Executive Officer, and Director	August 3, 2011
Carl W. Hull	<i>(Principal Executive Officer)</i>	
/s/ Herm Rosenman	Senior Vice President Finance	August 3, 2011
Herm Rosenman	and Chief Financial Officer <i>(Principal Financial Officer and Principal Accounting Officer)</i>	
/s/ Henry L. Nordhoff	Chairman of the Board of Directors	August 3, 2011
Henry L. Nordhoff		
/s/ John W. Brown	Director	August 3, 2011
John W. Brown		
/s/ Armin M. Kessler	Director	August 3, 2011
Armin M. Kessler		
/s/ John C. Martin	Director	August 3, 2011

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John C. Martin, Ph.D.

/s/ Phillip M. Schneider

Director

August 3, 2011

Phillip M. Schneider

/s/ Lucy Shapiro

Director

August 3, 2011

Lucy Shapiro, Ph.D.

/s/ Abraham D. Sofaer

Director

August 3, 2011

Abraham D. Sofaer

/s/ Patrick J. Sullivan

Director

August 3, 2011

Patrick J. Sullivan

**EXHIBIT INDEX**

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