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OPNET TECHNOLOGIES INC  
Form S-8  
January 28, 2002

As filed with the Securities and Exchange Commission on January 28, 2002  
Registration No. 333-\_\_\_\_\_

SECURITIES AND EXCHANGE COMMISSION  
Washington, D. C. 20549

Form S-8  
REGISTRATION STATEMENT UNDER  
THE SECURITIES ACT OF 1933

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

Delaware  
(State or other jurisdiction of  
incorporation or organization)

52-1483235  
(I.R.S. Employer  
Identification Number)

7255 Woodmont Avenue  
Bethesda, Maryland 20814  
(240) 497-3000  
(Address, including zip code, and telephone number, including area  
code, of registrant's principal executive offices)

AMENDED AND RESTATED 2000 STOCK INCENTIVE PLAN  
(Full title of the Plan)

Marc A. Cohen  
Chairman of the Board and Chief Executive Officer  
OPNET TECHNOLOGIES, INC.  
7255 Woodmont Avenue  
Bethesda, Maryland 20814  
(240) 497-3000  
(Name and address, including zip code, and telephone number, including  
area code, of agent for service)

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Number of shares to be registered (1)	Proposed maximum offering price per share	Proposed maxi aggregate offe price
Common Stock, \$.001 par value per share	1,000,000	\$13.90 (2)	\$13,900,000 (

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- (1) In accordance with Rule 416 under the Securities Act of 1933, as amended (the "Securities Act"), this registration statement shall be deemed to cover any additional securities that may from time to time be offered or issued to prevent dilution resulting from stock splits, stock dividends or similar transactions.
- (2) Estimated solely for the purpose of calculating the registration fee, and based upon the average of the high and low sale prices of the Registrant's Common Stock on the Nasdaq National Market on January 24, 2002 in accordance with Rules 457(c) and 457(h) of the Securities Act.

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

Item 1. Plan Information.  
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The information required by Item 1 is included in documents sent or given to participants in the Amended and Restated 2000 Stock Incentive Plan of OPNET Technologies, Inc. (the "Registrant"), pursuant to Rule 428(b)(1) under the Securities Act of 1933, as amended (the "Securities Act").

Item 2. Registrant Information and Employee Plan Annual Information.  
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The written statement required by Item 2 is included in documents sent or given to participants in the Amended and Restated 2000 Stock Incentive Plan of the Registrant pursuant to Rule 428(b)(1) under the Securities Act.

PART II. INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.  
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The Registrant is subject to the informational and reporting requirements of Sections 13(a), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and in accordance therewith files reports, proxy statements and other information with the Securities and Exchange Commission (the "Commission"). The following documents, which are on file with the Commission, are incorporated in this Registration Statement by reference:

(a) The Registrant's latest annual report filed pursuant to Section 13(a) or 15(d) of the Exchange Act or the latest prospectus filed pursuant to Rule 424(b) under the Securities Act that contains audited financial statements for the Registrant's latest fiscal year for which such statements have been filed.

(b) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the document referred to in (a) above.

(c) The description of the common stock of the Registrant, \$.001 par value per share (the "Common Stock"), which is contained in the Registration Statement on Form 8-A filed by the Registrant with the Commission on June 30, 2000, including any amendment or report filed for the purpose of updating such description.

All documents subsequently filed by the Registrant pursuant to Sections

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13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates that all shares offered hereby have been sold or which deregisters all shares then remaining unsold, shall be deemed to be incorporated in this Registration Statement by reference 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 the purposes of this Registration Statement to the extent 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.

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Not applicable.

### Item 5. Interests of Named Experts and Counsel.

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Not applicable.

### Item 6. Indemnification of Directors and Officers.

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The Registrant's Third Amended and Restated Certificate of Incorporation (the "Certificate") provides that, except to the extent prohibited by the Delaware General Corporation Law (the "DGCL"), the Registrant's directors shall not be personally liable to the Registrant or its stockholders for monetary damages for any breach of fiduciary duty as directors of the Registrant. Under the DGCL, the directors have a fiduciary duty to the Registrant which is not eliminated by this provision of the Certificate and, in appropriate circumstances, equitable remedies such as injunctive or other forms of nonmonetary relief will remain available. In addition, each director will continue to be subject to liability under the DGCL for breach of the director's duty of loyalty to the Registrant, for acts or omissions which are found by a court of competent jurisdiction to be not in good faith or involving intentional misconduct, for knowing violations of law, for actions leading to improper personal benefit to the director, and for payment of dividends or approval of stock repurchases or redemptions that are prohibited by the DGCL. This provision also does not affect the directors' responsibilities under any other laws, such as the federal securities laws or state or federal environmental laws. The Registrant has obtained liability insurance for its officers and directors.

Section 145 of the DGCL empowers a corporation to indemnify its directors and officers and to purchase insurance with respect to liability arising out of their capacity or status as directors and officers, provided that this provision shall not eliminate or limit the liability of a director: (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) arising under Section 174 of the DGCL including for an unlawful payment of dividend or unlawful stock purchase or redemption or (iv) for any transaction from which the director derived an improper personal benefit. The DGCL provides further that the indemnification permitted thereunder shall not be deemed exclusive of any other rights to which the directors and officers may be entitled under the corporation's by-laws, any agreement, a vote of stockholders or otherwise. The Certificate eliminates the personal liability of directors to the fullest extent permitted by the DGCL and, together with the Registrant's Amended and Restated

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By-Laws, provides that the Registrant shall fully 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) by reason of the fact that such person is or was a director or officer of the Registrant, or is or was serving at the request of the Registrant as a director or officer of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding.

Item 7. Exemption from Registration Claimed.  
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Not applicable.

Item 8. Exhibits.  
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The Exhibit Index immediately preceding the exhibits is attached hereto and incorporated herein by reference.

Item 9. Undertakings.  
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1. Item 512(a) of Regulation S-K. The undersigned Registrant  
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hereby undertakes:

(a) 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 the 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 the Registration Statement; and

(iii) to include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

provided, however, that paragraphs (i) and (ii) 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 the Registration Statement.

(b) 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.

(c) To remove from registration by means of a post-effective

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amendment any of the securities being registered which remain unsold at the termination of the offering.

2. Item 512(b) of Regulation S-K. 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.

3. Item 512(h) of Regulation S-K. 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 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 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 Bethesda, Maryland on January 25, 2002.

OPNET TECHNOLOGIES, INC.

By: /s/ Marc A. Cohen

Marc A. Cohen  
Chairman of the Board and  
Chief Executive Officer

POWER OF ATTORNEY

We, the undersigned officers and directors of OPNET Technologies, Inc., hereby severally constitute and appoint Marc A. Cohen, Alain J. Cohen, Dennis R. McCoy and Brent B. Siler, and each of them singly, our true and lawful attorneys with full power to them, and each of them singly, to sign for us and in our names in the capacities indicated below, the Registration Statement on Form S-8 filed herewith and any and all subsequent amendments to said Registration Statement, and generally to do all such things in our names and behalf in our capacities as officers and directors to enable OPNET Technologies, Inc. to

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comply with the provisions of the Securities Act of 1933, as amended, and all requirements of the Securities and Exchange Commission, hereby ratifying and confirming our signatures as they may be signed by said attorneys, or any of them, to said Registration Statement and any and all amendments thereto.

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/ Marc A. Cohen ----- Marc A. Cohen	Chairman of the Board and Chief Executive Officer (Principal Executive Officer)	January 25, 2002
/s/ Alain J. Cohen ----- Alain J. Cohen	President, Chief Technology Officer and Director	January 25, 2002
/s/ Bruce R. Evans ----- Bruce R. Evans	Director	January 25, 2002
/s/ Steven G. Finn ----- Steven G. Finn, PhD	Director	January 25, 2002
/s/ Joseph W. Kuhn ----- Joseph W. Kuhn	Vice President of Finance and Chief Financial Officer (Principal Financial and Accounting Officer)	January 25, 2002
/s/ William F. Stasior ----- William F. Stasior	Director	January 25, 2002

### EXHIBIT INDEX

Exhibit Number	Description -----
4.1*	Third Amended and Restated Certificate of Incorporation of the Registrant
4.2*	Amended and Restated Bylaws of the Registrant
5	Opinion of Hale and Dorr LLP, counsel to the Registrant
23.1	Consent of Deloitte & Touche LLP
23.2	Consent of Hale and Dorr LLP (included in Exhibit 5)

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24 Power of Attorney (included on the signature page of this Registration Statement)

\* Incorporated by reference herein from Exhibits to the Registrant's Registration Statement on Form S-1 (File No. 333-32588) as declared effective by the Commission on August 1, 2000.