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INKTOMI CORP
Form S-8
August 10, 2001

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As filed with the Securities and Exchange Commission on August 10, 2001
Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

INKTOMI CORPORATION
(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

DELAWARE
(STATE OR OTHER JURISDICTION OF
INCORPORATION OR ORGANIZATION)

94-3238130
(I.R.S. EMPLOYER
IDENTIFICATION NUMBER)

4100 E. THIRD AVENUE
FOSTER CITY, CA 94404
(ADDRESS, INCLUDING ZIP CODE, OF REGISTRANT'S PRINCIPAL EXECUTIVE OFFICES)

ESCENE NETWORKS, INC. 2000 STOCK INCENTIVE PLAN
(FULL TITLE OF THE PLAN)

TIMOTHY STEVENS
SENIOR VICE PRESIDENT OF BUSINESS
AFFAIRS AND GENERAL COUNSEL
4100 E. THIRD AVENUE
FOSTER CITY, CA 94404
(650) 653-2800
(NAME, ADDRESS, AND TELEPHONE NUMBER, INCLUDING AREA CODE, OF AGENT FOR SERVICE)

Copies to:
DOUGLAS H. COLLOM, ESQ.
WILSON SONSINI GOODRICH & ROSATI
PROFESSIONAL CORPORATION
650 PAGE MILL ROAD
PALO ALTO, CA 94304
(415) 493-9300

CALCULATION OF REGISTRATION FEE

TITLE OF EACH CLASS OF SECURITIES TO BE REGISTERED	AMOUNT TO BE REGISTERED	PROPOSED MAXIMUM OFFERING PRICE PER SHARE	PROPOSED MAXIMUM AGGREGATE OFFERING PRICE	A REG
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Common Stock, \$0.001 per
share par value: To be
issued under eScene
Networks, Inc. 2000 Stock

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Incentive Plan.....	39,755 shares	\$5.03 (1)	\$199,968.00 (1)
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(1) Estimated in accordance with Rule 457(h) solely for the purpose of computing the amount of the registration fee based on the weighted average exercise price of \$5.03 per share covering authorized but unissued shares under the eScene Networks, Inc. 2000 Stock Incentive Plan.

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PART II: INFORMATION REQUIRED IN REGISTRATION STATEMENT

ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE

Inktomi Corporation hereby incorporates by reference in this registration statement the following documents:

1. Inktomi's Annual Report on Form 10-K and 10K/A for the fiscal year ended September 30, 2000 filed pursuant to Section 13 of the Securities Exchange Act of 1934.

2. Inktomi's Quarterly Reports on Form 10-Q for the quarters ended December 31, 2000, and March 31, 2001 filed pursuant to Section 13 of the Securities Exchange Act of 1934.

3. Inktomi's current report on Form 8-K/A, filed on January 9, 2001 pursuant to Section 13 of the Exchange Act.

4. Inktomi's current report on Form 8-K, filed on January 12, 2001 pursuant to Section 13 of the Exchange Act.

5. Inktomi's current report on Form 8-K/A, filed on March 13, 2001 pursuant to Section 13 of the Exchange Act.

6. Inktomi's current report on Form 8-K, filed on April 12, 2001 pursuant to Section 13 of the Exchange Act.

7. The description of Inktomi's common stock contained in Inktomi's registration statement on Form 8-A, filed May 22, 1998 pursuant to Section 12(g) of the Exchange Act.

All documents we have filed pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended, after the date of this registration statement and prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, will be deemed to be incorporated by reference in this registration statement and to be part of this registration statement from the date of filing such documents.

ITEM 4. DESCRIPTION OF SECURITIES

Not applicable.

ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL

Not applicable.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS

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Section 145 of the Delaware General Corporation Law permits a corporation to include in its charter documents and in agreements between the corporation and its directors and officers, provisions expanding the scope of indemnification beyond that specifically provided by the current law.

Article X of Inktomi's Amended and Restated Certificate of Incorporation provides for the indemnification of directors to the fullest extent permitted under Delaware law.

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Article VI of Inktomi's Bylaws provides for the indemnification of officers, directors and third parties acting on behalf of the corporation to the fullest extent permitted under the General Corporation Law of Delaware.

Inktomi has entered into indemnification agreements with its directors and executive officers, in addition to indemnification provided for in Inktomi's Bylaws, and intends to enter into indemnification agreements with any new directors and executive officers in the future.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers, or persons controlling Inktomi pursuant to the foregoing provisions, Inktomi has been informed that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

At present, there is no pending litigation or proceeding involving a director, officer, employee, or other agent of Inktomi in which indemnification is being sought, nor is Inktomi aware of any threatened litigation that may result in a claim for indemnification by any director, officer, employee, or other agent of Inktomi.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED

Not applicable.

ITEM 8. EXHIBITS

EXHIBIT NUMBER -----	DOCUMENTS -----
4.1	eScene Networks, Inc. 2000 Stock Incentive Plan and form of agreements thereunder
5.1	Opinion of counsel as to legality of securities being registered
23.1	Consent of Counsel (contained in Exhibit 5.1)
23.2	Consent of Independent Accountants
24.1	Power of Attorney (see page II-5)

ITEM 9. UNDERTAKINGS

(a) Rule 415 Offering.

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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 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;

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(2) That, for the purpose of determining any liability under the Securities Act of 1933, as amended, 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.

(b) Filing Incorporating Subsequent Exchange Act Documents by Reference.

The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, as amended, 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.

(c) Request for Acceleration of Effective Date or Filing of Registration Statement on Form S-8.

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 Securities and Exchange 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, the Registrant certifies that it has reasonable grounds to believe that it meets all

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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 Foster City, State of California, on this 10th day of August, 2001.

INKTOMI CORPORATION

By: /s/ Jerry M. Kennelly

 Jerry M. Kennelly, Executive Vice
 President, Chief Financial Officer
 and Secretary

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POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints David C. Peterschmidt and Jerry M. Kennelly, and each of them, as his or her attorney-in-fact, with full power of substitution in each, for him or her in any and all capacities, to sign any amendments to this Registration Statement on Form S-8 and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that each of said attorneys-in-fact, or his substitute or substitutes, may 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 DATES INDICATED.

SIGNATURE -----	TITLE -----	DATE ----
/s/ David C. Peterschmidt ----- David C. Peterschmidt	President, Chief Executive Officer and Chairman (Principal Executive Officer)	August 10, 2001
/s/ Jerry M. Kennelly ----- Jerry M. Kennelly	Executive Vice President, Chief Financial Officer and Secretary (Principal Financial and Accounting Officer)	August 10, 2001
/s/ Eric A. Brewer ----- Eric A. Brewer	Director	August 10, 2001
/s/ Frank Gill ----- Frank Gill	Director	August 10, 2001
/s/ Fredric W. Harman -----	Director	August 10, 2001

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Fredric W. Harman

/s/ Alan F. Shugart

Director

August 10, 20

Alan F. Shugart

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INKTOMI CORPORATION
REGISTRATION STATEMENT ON FORM S-8
INDEX TO EXHIBITS

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