

HYSEQ INC
Form S-8
November 18, 2002

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As Filed with the Securities and Exchange Commission on November 18, 2002

Registration No. 333-_____

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM S-8

REGISTRATION STATEMENT
Under
THE SECURITIES ACT OF 1933

HYSEQ, INC.

(Exact name of Registrant as specified in its charter)

Nevada
(State or other jurisdiction of
incorporation or organization)

36-3855489
(I.R.S. Employer
Identification No.)

670 Almanor Avenue
Sunnyvale, California 94085
(Address of Principal Executive Offices including Zip Code)

HYSEQ, INC.
EMPLOYEE STOCK PURCHASE PLAN

(Full title of the Plan)

Dr. Ted W. Love
President
and Chief Executive Officer
Hyseq, Inc.
670 Almanor Avenue
Sunnyvale, California 94085
(408) 524-8100

Copy to:
Alan C. Mendelson, Esq.
Latham & Watkins
135 Commonwealth Drive
Menlo Park, California 94025
(650) 328-4600

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

CALCULATION OF REGISTRATION FEE

| Title of Securities | Amount of Shares to | Proposed Maximum | Proposed Maximum Aggregate Offering | Amount of |
|---------------------|---------------------|---------------------|--|-----------|
|---------------------|---------------------|---------------------|--|-----------|

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| to be Registered | be Registered (1) | Offering Price Per Share (2) | Price (3) | Registration Fee |
|---|-------------------|------------------------------------|-----------|------------------|
| Common Stock, \$0.001 par value per share | 500,000 | \$ 0.98 | \$490,000 | \$45.08 |

(1) This registration statement shall also cover any additional shares of common stock which become issuable under the Hyseq, Inc. Employee Stock Purchase Plan (the Plan), by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the 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 registration fee pursuant to Rule 457(c) for the 500,000 shares registered hereunder (the average (\$0.98) of the high (\$1.02) and low (\$0.94) prices for the registrant's common stock reported by the Nasdaq National Market on November 13, 2002).(3) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457 of the Securities Act.

Proposed sales to take place as soon after the effective date of the registration statement as options granted under the Plan are exercised.

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Item 8. Exhibits

SIGNATURES

INDEX TO EXHIBITS

EXHIBIT 4.3

EXHIBIT 5.1

EXHIBIT 23.2

EXHIBIT 23.3

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REGISTRATION OF ADDITIONAL SECURITIES

We filed with the Securities and Exchange Commission the following registration statements on Form S-8 relating to shares of our common stock, par value \$0.001 per share, to be offered and sold under our Employee Stock Purchase Plan, and the contents of such prior registration statements are incorporated by reference in this Registration Statement: (1) registration statement on Form S-8 filed June 13, 2000 (File No. 333-39194); and (2) registration statement on Form S-8 filed May 20, 1998 (File No. 333-53087). We are hereby registering an additional 500,000 shares of common stock issuable under our Employee Stock Purchase Plan.

Item 8. Exhibits

See Index to Exhibits on Page 4.

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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 the City of Sunnyvale, State of California, on this 18th day of November, 2002.

HYSEQ, INC.,
a Nevada corporation

By: /s/ Ted W. Love

Dr. Ted W. Love
President and Chief Executive Officer

POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints Dr. Ted W. Love and Peter S. Garcia, and each or any of them, his true and lawful attorney-in-fact and agent, 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) 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 substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

| Signature | Title | Date |
|---|--|-------------------|
| _____ /s/ Ted W. Love Dr. Ted W. Love | President and Chief Executive Officer | November 18, 2002 |
| _____ /s/ Peter S. Garcia Peter S. Garcia | Senior Vice President and Chief Financial Officer (Principal Financial and Accounting Officer) | November 18, 2002 |
| _____ /s/ George B. Rathmann Dr. George B. Rathmann | Chairman of the Board of Directors | November 18, 2002 |
| _____ /s/ Robert D. Weist Robert D. Weist | Vice Chairman of the Board of Directors | November 18, 2002 |
| _____ /s/ Raymond F. Baddour Dr. Raymond F. Baddour | Director | November 18, 2002 |

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/s/ Richard Brewer

Director

November 18, 2002

Richard Brewer

/s/ Thomas N. McCarter

Director

November 18, 2002

Thomas N. McCarter

/s/ Mary K. Pendergast

Director

November 18, 2002

Mary K. Pendergast

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| | |
|------|---|
| 4.1 | Hyseq, Inc. Employee Stock Purchase Plan* |
| 4.2 | Amendment No. 1 to the Hyseq, Inc. Employee Stock Purchase Plan** |
| 4.3 | Amendment No. 2 to the Hyseq, Inc. Employee Stock Purchase Plan |
| 5.1 | Opinion of Kummer Kaempfer Bonner & Renshaw |
| 23.1 | Consent of Kummer Kaempfer Bonner & Renshaw (included in Exhibit 5.1 hereto). |
| 23.2 | Consent of KPMG LLP, Independent Auditors. |
| 23.3 | Consent of Ernst & Young LLP, Independent Auditors. |
| 24.1 | Powers of Attorney (included on signature page of this registration statement). |

* Filed as an exhibit to our registration statement on Form S-8, registration statement no. 333-53087, filed on May 20, 1998, and incorporated herein by reference.

** Filed as an exhibit to our registration statement on Form S-8, registration statement no. 333-39194, filed on June 13, 2000, and incorporated herein by reference.