

POSITRON CORP  
Form S-8  
July 29, 2008

As filed with the Securities and Exchange Commission on July 29, 2008

Registration No. 333- \_\_\_\_\_

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

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

POSITRON CORPORATION  
(Exact Name of Registrant as Specified in Its Charter)

Texas  
(State or Other Jurisdiction of Incorporation or  
Organization)

76-0083622  
(I.R.S. Employer Identification No.)

1304 Langham Creek Drive, Suite 300  
Houston, Texas 77084  
(Address of Principal Executive Offices, including Zip Code)

2008 Stock Incentive Plan  
(Full Title of the Plan)

Patrick Rooney

Chairman  
1304 Langham Creek Drive, Suite 300  
Houston, Texas 77084  
(Name, Address and Telephone Number of Agent For Service)

Copies of all communications to:

Peter Campitiello, Esq.  
Tarter Krinsky & Drogin LLP  
1350 Broadway  
New York, New York 10018  
212 216-8000

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## CALCULATION OF REGISTRATION FEE

Title Of Each Class Of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount Of Registration Fee
Common Stock, \$0.01 par value To be issued under the 2008 Stock Option Plan	6,000,000(2)	\$ 0.07(3)	\$ 420,000	\$ 16.51
Total	6,000,000	\$ 0.07	\$ 420,000	\$ 16.51

(1) This Registration Statement shall also cover any additional shares of Common Stock which become issuable under the 2008 Stock Option Plan by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the Registrant's receipt of consideration which results in an increase in the number of the outstanding shares of Registrant's Common Stock.

(2) Represents shares reserved for issuance under the 2008 Stock Incentive Plan.

(3) Estimated solely for the purpose of calculating the registration fee in accordance with Rules 457(c) and (h) promulgated under the Securities Act of 1933 and based upon the average of the high and low sales prices of Positron Corporation Common Stock reported on the Over the Counter Bulletin Board on July 27, 2008.

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PART I

INFORMATION REQUIRED IN THE PROSPECTUS

Item 1. Plan Information.\*

Item 2. Registrant Information and Employee Program Annual Information.\*

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\* Information required by Part I to be contained in each Section 10(a) prospectus is omitted from this Registration Statement in accordance with Rule 428 under the Securities Act of 1933, as amended (the "Securities Act") and the Note to Part I of Form S-8.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents previously filed by Positron Corporation (the "Registrant") with the Securities and Exchange Commission (the "Commission") are hereby incorporated by reference in this Registration Statement:

(a) Registrant's Annual Report on Form 10-KSB for the fiscal year ended December 31, 2007, filed with the Commission on April 14, 2007 pursuant to Section 13(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act").

(b) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the latest fiscal year covered by the document referred to in (a) above, including Registrant's Quarterly Reports on Form 10-QSB for the quarterly periods ended June 30, 2007 September 30, 2007 and March 31, 2008, filed with the Commission on August 14, 2007, November 14, 2007 and May 20, 2008 respectively.

(c) The description of Registrant's Common Stock contained in Registrant's Registration Statement on Form S-1, filed with the Commission on August 30, 2007 (File No. 333-145801) pursuant to Rule 14(c) of the Exchange Act, including any amendments or reports filed for the purpose of updating such description.

In addition, all documents subsequently filed by Registrant pursuant to Sections 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 securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this registration statement and to be a part hereof from the date of filing of such documents. Unless expressly incorporated into this Registration Statement, a report furnished on Form 8-K prior or subsequent to the date hereof shall not be incorporated by reference into this Registration Statement. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained in any subsequently filed document which also is deemed to be incorporated by reference herein modifies or supersedes such statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

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Item 6. Indemnification of Directors and Officers

Pursuant to the Texas Business Corporate Act (the "BCA"), Positron's Articles of Incorporation exclude personal liability on the part of its directors to the Company for monetary damages based upon any violation of their fiduciary duties as directors, provided the director acted in good faith, reasonably believed the conduct was in the best interests of the corporation and had no reason to believe the conduct was unlawful. Positron's Articles of Incorporation and its By-laws require indemnification of directors and officers of the registrant to the fullest extent permitted by the BCA for claims against them in their official capacities, including stockholders' derivative actions.

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

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

No.	Description of Exhibit
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<u>5</u>	Opinion of Tarter Krinsky & Drogin LLP
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<u>10.1</u>	2008 Stock Incentive Plan
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<u>23.1</u>	Consent of Independent Registered Public Accounting Firm
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<u>23.2</u>	Consent of Tarter Krinsky & Drogin LLP (included in Exhibit 5)
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<u>24</u>	Powers of Attorney
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Item 9. Undertakings.

(a) 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:

(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 this Registration Statement (or the most recent post-effective amendment hereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of

Registration Fee” table in the effective Registration Statement; and

(iii) to include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement; provided, however, that paragraphs (a)(1)(i) and (a)(1)(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 by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in this Registration Statement.

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(2) 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.

(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) 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 into this 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) 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.

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 Houston, State of Texas on July 28, 2008.

POSITRON CORPORATION

By: /s/ Patrick Rooney  
Patrick Rooney  
Chairman of the Board