

APPLIED DNA SCIENCES INC
Form S-8
June 26, 2012

As filed with the Securities and Exchange Commission on June 26, 2012

Registration No. 333-

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

Applied DNA Sciences, Inc.

(Exact name of registrant as specified in its charter)

Delaware

59-2262718

(State or other jurisdiction
of incorporation or organization)

(I.R.S. Employer Identification No.)

25 Health Sciences Drive, Suite 215
Stony Brook, New York
(Address of Principal Executive Offices)

11790
(Zip Code)

Applied DNA Sciences, Inc. 2005 Incentive Stock Plan
(Full title of the plan)

James A. Hayward, Ph.D., Sc.D.
Chief Executive Officer
Applied DNA Sciences, Inc.
25 Health Sciences Drive, Suite 215
Stony Brook, New York 11790
Telephone: (631) 444-8090

Copies to:

Merrill M. Kraines, Esq.
Fulbright & Jaworski L.L.P.
666 Fifth Avenue
New York, New York 10103
Telephone: (212) 318-3261
Facsimile: (212) 318-3400

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company in Rule 12b-2 of the Exchange Act.

Large accelerated filer
Non-accelerated filer

Accelerated filer
Smaller reporting
company

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(Do not check if a smaller reporting company)

| Title 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, \$0.001 par value per share | 250,000,000 | \$0.05(2) | \$12,500,000 | \$1,433 |

(1) Represents additional shares authorized for issuance under the Applied DNA Sciences 2005 Incentive Stock Plan. Pursuant to Rule 416 under the Securities Act of 1933, as amended, this Registration Statement on Form S-8 also covers an additional indeterminable number of shares of Common Stock as may be necessary to adjust the number of shares being offered or issued pursuant to the Applied DNA Sciences, Inc. 2005 Incentive Stock Plan as a result of any future stock splits, stock dividends, recapitalizations or similar transactions effected without the receipt of consideration which results in an increase in the number of outstanding shares of Common Stock.

(2) Estimated in accordance with Rules 457(c) and (h) under the Securities Act of 1933, as amended, solely for the purpose of calculating the registration fee, based upon the average bid and asked prices of the Common Stock as quoted on the OTC Bulletin Board on June 25, 2012.

EXPLANATORY NOTE

This Registration Statement on Form S-8 relates to the registration of an additional 250,000,000 shares of common stock, par value \$0.001 per share (“Common Stock”) of Applied DNA Sciences, Inc. (the “Company”) for future issuance pursuant to awards under the Company’s 2005 Incentive Stock Plan, as amended (the “Plan”). In accordance with General Instruction E to Form S-8, the contents of the previous Registration Statement on Form S-8 related to the Plan (Commission File No. 333-163478, filed on December 3, 2009 with the Securities and Exchange Commission) are incorporated herein by reference and made part of this Registration Statement, except as amended hereby. Effective as of January 27, 2012, the Company amended the Plan to increase the number of shares of Common Stock that may be issued under the Plan to 350,000,000 shares of Common Stock from 100,000,000 shares of Common Stock.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

ITEM Incorporation of Documents by Reference.

3.

Applied DNA Sciences, Inc., or the Registrant, hereby incorporates by reference into this Registration Statement on Form S-8 the following documents and information previously filed with the Commission:

- (i) the Registrant's annual report on Form 10-K for the fiscal year ended September 30, 2011, filed on December 9, 2011.
- (ii) the Registrant's quarterly reports on Form 10-Q for the quarters ended December 31, 2011 and March 31, 2012 filed on February 14, 2012 and May 15, 2012 respectively; and
- (iii) the Registrant's current reports on Form 8-K filed on January 30, 2012 and June 26, 2012.

In addition to the foregoing, all documents filed by us pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (other than Current Reports on Form 8-K furnished pursuant to Item 2.02 or Item 7.01 of Form 8-K, including any exhibits included with such information, unless otherwise indicated therein), subsequent to the date of this Registration Statement and prior to the filing of a post-effective amendment that indicates that all securities offered have been sold or that deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part hereof from the date of filing of such documents.

Any statement contained in this Registration Statement or in a document incorporated or deemed to be incorporated herein by reference shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any subsequently filed document which also is, or is deemed to be, incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

ITEM Description of Securities.

4.

Common Stock, \$0.001 par value per share.

The holders of common stock are entitled to one vote for each share held of record on all matters to be voted on by the stockholders. The holders of common stock are entitled to receive dividends ratably when, as and if declared by the board of directors out of funds legally available therefore. In the event of our liquidation, dissolution or winding up, the holders of common stock are entitled to share equally and ratably in all assets remaining available for distribution after payment of liabilities and after provision is made for each class of stock, if any, having preference over the common stock. Holders of common stock have no preemptive, subscription, redemption or conversion rights. The outstanding shares of common stock are validly issued, fully paid and non-assessable.

ITEM 5. Interest of Named Experts and Counsel.

Not applicable.

ITEM Indemnification of Directors and Officers.
6.

Section 145 of the Delaware General Corporation Law provides that a corporation may indemnify directors and officers as well as other employees and individuals against expenses (including attorney's fees), judgements, fines and amounts paid in settlement actually and reasonably incurred in connection with any threatened, pending or completed actions, suits or proceedings in which such person is made a party by reason of such person being or having been a director, officer, employee or agent to the corporation. The Delaware General Corporation Law provides that Section 145 is not exclusive of other rights to which those seeking indemnification may be entitled under any by-law, agreement, vote of stockholders or disinterested directors or otherwise.

Our Certificate of Incorporation provides to the fullest extent permitted by Delaware law that our directors shall not be personally liable to us or our shareholders for monetary damages for breach of such director's fiduciary duty as a director.

Section 9.3 of our By-Laws provides for the indemnification of our directors, officers and employees to the fullest extent permitted by the Delaware General Corporation Law.

The Company maintains insurance under which coverage is provided to its directors and officers against certain losses arising from claims of breach of duty.

ITEM Exemption from Registration Claimed.

7.

Not Applicable.

ITEM Exhibits.

8.

The following exhibits are filed herewith as part of this Registration Statement.

| Exhibit No. | Exhibit Description |
|-------------|---|
| 4.1 | Applied DNA Sciences, Inc. 2005 Stock Incentive Plan, as amended as of January 27, 2012, and form of employee stock option agreement thereunder |
| 5.1 | Opinion of Fulbright & Jaworski L.L.P. |
| 23.1 | Consent of Fulbright & Jaworski L.L.P. (contained in Exhibit 5.1) |
| 23.2 | Consent of RBSM LLP, independent registered public accounting firm |
| 24.1 | Power of Attorney (included as part of signature page to this Registration Statement) |

ITEM Undertakings.

9.

(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 of 1933;

(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 thereof) 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;

(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 reports filed with or furnished to the Commission by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in this Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, 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 of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in 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.

(h) Insofar as indemnification for liabilities arising under the Securities Act of 1933 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 Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment of 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 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 Town of Stony Brook, State of New York, on June 26, 2012.

APPLIED DNA SCIENCES, INC.

By: /s/ JAMES A. HAYWARD
James A. Hayward
Chairman, President and Chief Executive Officer

POWER OF ATTORNEY

Each person whose signature appears below appoints Dr. James A. Hayward and Mr. Kurt H. Jensen, and each of them, any of whom may act without the joinder of the other, as 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) to this Registration Statement and any Registration Statement (including any amendment thereto) for this offering that is to be effective upon filing pursuant to Rule 462 under the Securities Act of 1933 and to file the same, with all exhibits thereto, and all other documents in connection therewith, with the SEC, granting unto said attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as he might or would do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them of their or his substitute and 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 dates indicated.

| Signature | Title | Date |
|---|---|---------------|
| /s/ James A. Hayward James A. Hayward | Chief Executive Officer (Principal Executive Officer), President, Chairman of the Board of Directors and Director | June 26, 2012 |
| /s/ Kurt H. Jensen Kurt H. Jensen | Chief Financial Officer (Principal Financial and Accounting Officer) | June 26, 2012 |
| /s/ John Bitzer, III John Bitzer, III | Director | June 26, 2012 |
| /s/ Gerald Catenacci Gerald Catenacci | Director | June 26, 2012 |
| /s/ Karol Gray Karol Gray | Director | June 26, 2012 |
| /s/ Charles Ryan Charles Ryan | Director | June 26, 2012 |
| /s/ Yacov Shamash Yacov Shamash | Director | June 26, 2012 |
| /s/ Sanford R. Simon— Sanford R. Simon | Director | June 26, 2012 |

EXHIBIT INDEX

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