

APPLIED GENETIC TECHNOLOGIES CORP

Form S-8

September 26, 2014

As filed with the Securities and Exchange Commission on September 26, 2014

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 Genetic Technologies Corporation
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

11801 Research Drive, Suite D

Alachua, Florida 32615

59-3553710
(I.R.S. employer
identification no.)

(386) 462-2204

(Address of principal executive offices)

Applied Genetic Technologies Corporation 2001 Stock Option Plan

Applied Genetic Technologies Corporation 2011 Stock Incentive Plan

Applied Genetic Technologies Corporation 2013 Equity and Incentive Plan

Applied Genetic Technologies Corporation 2013 Employee Stock Purchase Plan

(Full title of the plan(s))

Susan B. Washer

President and Chief Executive Officer

Applied Genetic Technologies Corporation

11801 Research Drive, Suite D

Alachua, Florida 32615

(386) 462-2204

(Name and address of agent for service)

Copies to:

Robert W. Sweet, Jr., Esq.

Hemie Chang, Esq.

Foley Hoag LLP

Seaport West

155 Seaport Boulevard

Boston, Massachusetts 02210

Telephone: (617) 832-1000

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer Accelerated filer
 Non-accelerated filer (Do not check if a smaller reporting company) Smaller reporting company

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered	Proposed maximum offering price per share	Proposed maximum aggregate offering price	Amount of registration fee
Common Stock, \$0.001 par value	57,825(1)(2)	\$3.50(3)	\$202,388	\$27
Common Stock, \$0.001 par value	653,960(2)(4)	\$3.20(3)	\$2,092,672	\$270
Common Stock, \$0.001 par value	489,364(2)(5)	\$14.32(3)	\$7,007,693	\$903
Common Stock, \$0.001 par value	1,599,827(2)(6)	\$16.33(7)	\$26,125,175	\$3,365
Common Stock, \$0.001 par value	128,571(2)(8)(9)	\$16.33(7)	\$2,099,565	\$271
Total:	2,929,547		\$37,527,493	\$4,836

1. Represents shares of the Registrant's common stock issuable upon exercise of outstanding stock options granted pursuant to the Applied Genetic Technologies Corporation 2001 Stock Option Plan (the **2001 Option Plan**) as of September 22, 2014.
2. Pursuant to Rule 416(a) under the Securities Act, this Registration Statement shall also cover any additional shares of the Registrant's common stock that become issuable under the 2001 Option Plan, the 2011 Incentive Plan, the 2013 Incentive Plan and the 2013 ESPP, each as defined below, by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the receipt of consideration that increases the number of the Registrant's outstanding shares of common stock.
3. The proposed maximum offering price per share has been estimated in accordance with Rule 457(h) under the Securities Act of 1933, as amended (the **Securities Act**) solely for the purpose of calculating the registration fee with respect to shares reserved for future issuance upon exercise of stock options granted pursuant to the 2001 Option Plan, the 2011 Incentive Plan, and the 2013 Incentive Plan based on the weighted average exercise price (rounded to the nearest cent) for such outstanding options.
4. Represents shares of the Registrant's common stock issuable upon exercise of outstanding stock options granted pursuant to the Applied Genetic Technologies Corporation 2011 Stock Incentive Plan (the **2011 Incentive Plan**) as of September 22, 2014.
5. Represents shares of the Registrant's common stock issuable upon exercise of outstanding stock options granted pursuant to the Applied Genetic Technologies Corporation 2013 Equity and Incentive Plan (the **2013 Incentive Plan**) as of September 22, 2014.
6. Represents shares of the Registrant's common stock available for issuance pursuant to awards that may be issued in the future under the 2013 Incentive Plan as of September 22, 2014.
- 7.

The proposed maximum offering price per share has been estimated in accordance with Rule 457(c) and Rule 457(h) under the Securities Act solely for the purpose of calculating the registration fee with respect to shares reserved for future issuance based on the average of the high and low price of the Registrant's Common Stock as quoted on the Nasdaq Global Market on September 23, 2014.

8. Represents shares of the Registrant's common stock issuable pursuant to the Applied Genetic Technologies Corporation 2013 Employee Stock Purchase Plan (the **2013 ESPP**).
9. Pursuant to Rule 416(c) under the Securities Act, this registration statement also covers an indeterminate amount of interests to be offered or sold pursuant to the 2013 ESPP described herein.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed by Applied Genetic Technologies Corporation with the Securities and Exchange Commission (the **Commission**) are incorporated by reference in this registration statement:

- a) Registrant's annual report on Form 10-K for the fiscal year ended June 30, 2014, filed with the Securities and Exchange Commission on September 26, 2014;
- b) Registrant's current report on Form 8-K, event date June 27, 2014, filed with the Securities and Exchange Commission on July 3, 2014;
- c) Registrant's current report on Form 8-K, event date July 31, 2014, filed with the Securities and Exchange Commission on August 6, 2014; and
- d) The description of the Registrant's common stock contained in the registrant's registration statement on Form 8-A (Registration No. 001-36370), filed by the registrant with the Securities and Exchange Commission on March 24, 2014.

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 dates of filing of those documents.

Under no circumstances will any information furnished under items 2.02 or 7.01 of Form 8-K be deemed incorporated herein by reference unless such Form 8-K expressly provides to the contrary.

You may request a copy of the filings incorporated by reference herein, at no cost, by writing or telephoning the Registrant at:

Applied Genetic Technologies Corporation

11801 Research Drive, Suite D

Alachua, Florida 32615

(386) 462-2204

You should rely only on the information provided or incorporated by reference in this registration statement or any related prospectus. The Registrant has not authorized anyone to provide you with different information. You should not assume that the information in this registration statement or any related prospectus is accurate as of any date other than the date on the front of the document.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

The validity of the securities registered hereby is being passed upon for Applied Genetic Technologies Corporation by Foley Hoag LLP, Boston, Massachusetts.

Item 6. Indemnification of Directors and Officers.

Section 102 of the Delaware General Corporation Law permits a corporation to eliminate the personal liability of directors of a corporation to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director, except where the director breached his duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit.

Section 145 of the Delaware General Corporation Law provides that a corporation has the power to indemnify a director, officer, employee or agent of the corporation and certain other persons serving at the request of the corporation in related capacities against expenses (including attorneys' fees), judgments, fines and amounts paid in settlements actually and reasonably incurred by the person in connection with an action, suit or proceeding to which he is or is threatened to be made a party by reason of such position, if such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, in any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful, except that, in the case of actions brought by or in the right of the corporation, no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or other adjudicating court determines that, despite the adjudication of liability but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

As permitted by the Delaware General Corporation Law, the Company's fifth amended and restated certificate of incorporation and bylaws provide that: (i) the Company is required to indemnify its directors to the fullest extent permitted by the Delaware General Corporation Law; (ii) the Company may, in its discretion, indemnify its employees and agents as set forth in the Delaware General Corporation Law; (iii) the Company is required, upon satisfaction of certain conditions, to advance all expenses incurred by its directors and officers in connection with certain legal proceedings; (iv) the rights conferred in the bylaws are not exclusive; (v) the Company is authorized to enter into indemnification agreements with its directors, officers, employees and agents and (vi) the liability of the Company's directors for monetary damages is eliminated to the fullest extent permissible under law.

The Company maintains a directors' and officers' liability insurance policy. The policy insures directors and officers against unindemnified losses arising from certain wrongful acts in their capacities as directors and officers and reimburses the Company for those losses for which it has lawfully indemnified the directors and officers. The policy contains various exclusions.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Exhibit No.	Description	Filed with this Registration Statement	Incorporated by Reference		
			Form	Filing Date	Exhibit No.
3.1	Fifth Amended and Restated Certificate of Incorporation of the Company		8-K	April 1, 2014	3.1
3.2	Amended and Restated By-Laws of the Company		8-K	April 1, 2014	3.2
4.1	Specimen certificate for common stock of Applied Genetic Technologies Corporation		S-1/A	March 12, 2014	4.1
4.2	Applied Genetic Technologies Corporation 2001 Stock Option Plan, as amended		S-1	January 10, 2014	10.13
4.3	Applied Genetic Technologies Corporation 2011 Stock Incentive Plan, as amended		S-1/A	March 4, 2014	10.14
4.4	Applied Genetic Technologies Corporation 2013 Equity and Incentive Plan		S-1/A	March 4, 2014	10.15
4.4	Applied Genetic Technologies Corporation 2013 Employee Stock Purchase Plan		S-1/A	March 4, 2014	10.16
5.1	Opinion of Foley Hoag LLP	X			
23.1	Consent of Independent Registered Public Accounting Firm	X			
23.2	Consent of Foley Hoag LLP (included in Exhibit 5.1)	X			
24.1	Power of attorney (contained on the signature page of this registration statement)				

Item 9. Undertakings.

The undersigned registrant hereby undertakes:

(a)(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 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 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the 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; and
4. 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 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.
5. 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 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 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 Alachua, Florida, as of September 26, 2014.

APPLIED GENETIC TECHNOLOGIES CORPORATION

By: /s/ Susan B. Washer
 Susan B. Washer
 Chief Executive Officer and President

POWER OF ATTORNEY

KNOW ALL BY THESE PRESENTS that each individual whose signature appears below constitutes and appoints each of Susan B. Washer and Lawrence E. Bullock as such person's true and lawful attorney-in-fact and agent with full power of substitution and resubstitution, for such person in such person's name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement, and to file the same, with all exhibits thereto, and all documents in connection therewith, with the SEC, granting unto each said attorney-in-fact and agent 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 such person might or could do in person, hereby ratifying and confirming all that any said attorney-in-fact and agent, or any substitute or substitutes of any of them, 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 person in the capacity and on the date indicated.

Signature	Title	Date
/s/ Susan B. Washer Susan B. Washer	Chief Executive Officer, President and Director (Principal Executive Officer)	September 26, 2014
/s/ Lawrence E. Bullock Lawrence E. Bullock	Chief Financial Officer (Principal Financial and Accounting Officer)	September 26, 2014
/s/ Scott Koenig Scott Koenig	Director	September 26, 2014
/s/ David Guyer David Guyer	Director	September 26, 2014
/s/ Ed Hurwitz Ed Hurwitz	Director	September 26, 2014
/s/ Ivana Magovcevic-Liebisch Ivana Magovcevic-Liebisch	Director	September 26, 2014

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/s/ Arnold Oronsky
Arnold Oronsky

Director

September 26, 2014

/s/ James Rosen
James Rosen

Director

September 26, 2014