

KOPIN CORP

FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 08/09/13

Address	125 NORTH DRIVE WESTBOROUGH, MA 01581
Telephone	508-870-5959
CIK	0000771266
Symbol	KOPN
SIC Code	3674 - Semiconductors and Related Devices
Industry	Semiconductors
Sector	Technology
Fiscal Year	12/31

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549**

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

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

DELAWARE
(State or Other Jurisdiction of
Incorporation or Organization)

04-2833935
(I.R.S. Employer
Identification No.)

**125 North Drive
Westborough, MA 01581**
(Address of Principal Executive Offices) (Zip Code)

2010 EQUITY INCENTIVE PLAN
(Full Title of the Plan)

**Richard A. Sneider
Chief Financial Officer
Kopin Corporation
125 North Drive
Westborough, MA 01581**
(Name and Address of Agent For Service)

(508) 870-5959
Telephone Number, Including Area Code, of Agent for Service

Copies to:

**John J. Concannon, Esq.
Bingham McCutchen LLP
One Federal Street
Boston, MA 02110
(617) 951-8000
Fax: 617-951-8736**

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 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 (1)	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price (2)	Amount Of Registration Fee
2010 Equity Incentive Plan				
Common Stock, \$0.01 par value	1,200,000	\$3.56(1)	\$4,272,000	\$583

- (1) In addition, pursuant to Rule 416(c) under the Securities Act of 1933, as amended, this Registration Statement on Form S-8 (the “Registration Statement”) also covers an indeterminate number of additional shares of common stock that may be offered or issued in the event of a stock dividend, reverse stock split, split-up, recapitalization, forfeiture of stock, or other similar event.
- (2) Estimated solely for purposes of computing the registration fee pursuant to Rule 457(h) under the Securities Act of 1933, as amended, based on the average of the high and low prices of the Common Stock, \$0.01 par value per share, or the “Common Stock,” of Kopin Corporation, or the “Company,” reported on the NASDAQ Global Market on August 7, 2013. It is not known how many of these shares will be purchased or at what price.

EXPLANATORY NOTE

At the 2013 annual meeting of stockholders on May 9, 2013, the Company's stockholders approved an increase in the authorized shares of the Company's 2010 Equity Incentive Plan, or the "Plan."

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. *Plan Information.* *

Item 2. *Registrant Information and Employee Plan Annual Information.* *

* Information required by Part I to be contained in the 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 in accordance with the Introductory Note to Part I of Form S-8.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. *Incorporation of Documents by Reference.*

The Company incorporates by reference the documents listed below and any future filings the Company will make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"):

- Annual Report on Form 10-K for the year ended December 29, 2012 (filed on March 18, 2013);
- Quarterly Reports on Form 10-Q for the quarters ended March 30, 2013 (filed on May 9, 2013) and June 29, 2013 (filed on August 8, 2013);
- Current Reports on Form 8-K filed on March 20, 2013, March 22, 2013, May 1, 2013, May 8, 2013, May 14, 2013 and August 6, 2013;
- Definitive Proxy Statement on Schedule 14A relating to the Company's 2013 Annual Meeting of Shareholders (filed on April 5, 2013); and
- the description of the Common Stock, par value \$0.01 per share, contained in the Company's Registration Statement on Form S-3 (filed on November 24, 2009).

In addition, all documents filed by the Company subsequent to the date of this Registration Statement 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 registered hereby have been sold or which deregisters all of such securities then remaining unsold, shall be incorporated by reference into this Registration Statement as of the filing date of each.

You may request a copy of these filings at no cost (other than exhibits unless those exhibits are specifically incorporated by reference herein) by writing or telephoning us at the following address:

**Kopin Corporation
Attn: Investor Relations
125 North Drive
Westborough, MA 01581
(508) 870-5959**

Item 5. *Interests of Named Experts and Counsel.*

The validity of the securities registered hereby is being passed upon for us by Bingham McCutchen LLP. One or more partners or other employees of Bingham McCutchen LLP may beneficially own shares of our Common Stock.

Item 6. *Indemnification of Directors and Officers.*

Section 145 of the Delaware General Corporation Law, or “DGCL,” provides that a corporation may indemnify any persons who were, are or are threatened to be made, parties to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person is or was an officer, director, employee or agent of such corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise. The indemnity may include expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation’s best interests and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful.

Section 145 of the DGCL further authorizes a corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or enterprise, against any liability asserted against him or her and incurred by him or her in any such capacity, arising out of his or her status as such, whether or not the corporation would otherwise have the power to indemnify him or her under Section 145 of the DGCL.

The Amended and Restated Certificate of Incorporation and the Fourth Amended and Restated By-laws of the Company include provisions to (i) eliminate the personal liability of the Company’s directors for monetary damages resulting from breaches of their fiduciary duty to the extent permitted by Section 102(b)(7) of the DGCL and (ii) authorize the Company to indemnify its directors and officers to the fullest extent permitted by Section 145 of the DGCL, including circumstances in which indemnification is otherwise discretionary. The Company has purchased an insurance policy covering its officers and directors with respect to certain liabilities arising under the Securities Act of 1933, as amended, or otherwise.

The indemnification provisions in the Company’s Amended and Restated Certificate of Incorporation and Fourth Amended and Restated By-laws may be sufficiently broad to permit indemnification of the Company’s directors and executive officers for liabilities arising under the Securities Act.

The foregoing summaries are necessarily subject to the complete text of the DGCL, the Amended and Restated Certificate of Incorporation and the Fourth Amended and Restated By-laws referred to above and are qualified in their entirety by reference thereto.

Item 8. *Exhibits .*

The following exhibits are filed as part of or incorporated by reference into this Registration Statement:

<u>Exhibit Number</u>	<u>Description of Document</u>
4.1	(1) Kopin Corporation 2010 Equity Incentive Plan.
5.1	** Opinion of Bingham McCutchen LLP regarding the validity of the securities offered hereby.
23.1	** Consent of Independent Registered Public Accounting Firm
23.2	** Consent of Bingham McCutchen LLP (included in Exhibit 5.1).
24	** Power of Attorney (included on the signature page of this Registration Statement).

(1) Filed as an appendix to our Definitive Proxy Statement on Schedule 14A filed on April 5, 2013.
** Filed herewith.

Item 9. Undertakings.

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 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. 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 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 the registration statement or any material change to such information in the registration statement;
Provided however, that: paragraphs (1)(i) and (1)(ii) of this section do not apply if the registration statement is on Form S-8, and 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 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.

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 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 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.

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, as amended, the registrant, Kopin Corporation, 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 Taunton, Commonwealth of Massachusetts, on this 8th day of August, 2013.

KOPIN CORPORATION

By: /s/ John C.C. Fan

Name: John C.C. Fan

Title: President and Chief Executive Officer
(principal executive officer)

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints John C.C. Fan and Richard A. Sneider, and each of them, as such person's true and lawful attorneys-in-fact and agents with full power of substitution and resubstitution, for such person and in such person's name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) and additions to this Registration Statement on Form S-8 and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, and hereby grants to such 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 such person might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or such person's substitute or 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 indicated as of the 8th day of August, 2013.

<u>Signature</u>	<u>Capacity</u>
<u>/ s/ J O H N C . C . F A N</u> John C.C. Fan	Chief Executive Officer, President and Chairman of the Board of Directors (principal executive officer)
<u>/ s/ R I C H A R D A . S N E I D E R</u> Richard A. Sneider	Chief Financial Officer (principal financial and accounting officer)
<u>/ s/ J A M E S K . B R E W I N G T O N</u> James K. Brewington	Director
<u>David E. Brook</u>	Director
<u>/ s/ M O R T O N C O L L I N S</u> Morton Collins	Director
<u>/ s/ A N D R E W C H A P M A N</u> Andrew H. Chapman	Director
<u>/ s/ C H I C H I A H S I E H</u> Chi Chia Hsieh	Director
<u>/ s/ M I C H A E L J . L A N D I N E</u> Michael J. Landine	Director

EXHIBIT INDEX

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23.2	** Consent of Bingham McCutchen LLP (included in Exhibit 5.1).
24	** Power of Attorney (included on the signature page of this Registration Statement).
(1)	Filed as an appendix to our Definitive Proxy Statement on Schedule 14A filed on April 5, 2013.
**	Filed herewith.

August 8, 2013

Kopin Corporation
125 North Drive
Westborough, MA 01581

Re: Registration Statement on Form S-8

Ladies and Gentlemen:

This opinion is furnished in connection with the registration, pursuant to a Registration Statement on Form S-8 under the Securities Act of 1933, as amended (the “Securities Act”), to be filed with the Securities and Exchange Commission on or about March 9, 2011 (the “Registration Statement”), of an aggregate of 1,200,000 shares (the “Shares”) of common stock, par value \$0.01 per share (the “Common Stock”), of Kopin Corporation, a Delaware corporation (the “Company”), all of which are or will be issuable to directors, employees and consultants of the Company as awards issued or to be issued in accordance with the terms of the Company’s 2010 Equity Incentive Plan (the “2010 Plan”).

We have acted as counsel to the Company in connection with the foregoing registration of the Shares. We have examined and relied upon originals or copies of such records, instruments, certificates, memoranda, and other documents as we have deemed necessary or advisable for purposes of this opinion and have assumed, without independent inquiry, the accuracy of those documents. In that examination, we have assumed the genuineness of all signatures, the conformity to the originals of all documents reviewed by us as copies, the authenticity and completeness of all original documents reviewed by us in original or copy form, and the legal competence of each individual executing such documents.

We further assume that all Shares issued pursuant to awards granted or to be granted pursuant to the 2010 Plan will be issued in accordance with the terms of the 2010 Plan and that the purchase price of the Shares will be greater than or equal to the par value per share of the Shares.

This opinion is limited solely to the Delaware General Corporation Law.

Based upon and subject to the foregoing, we are of the opinion that the Shares to be issued by the Company pursuant to the 2010 Plan have been duly authorized, and when issued and delivered in accordance with the terms of the 2010 Plan, will be validly issued, fully paid, and nonassessable.

We consent to the filing of a copy of this opinion as an exhibit to the Registration Statement.

Very truly yours,

/s/ BINGHAM MCCUTCHEN LLP

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement on Form S-8 of our reports dated March 18, 2013, relating to the consolidated financial statements (which report expresses an unqualified opinion and includes an explanatory paragraph regarding the sale of the III-V product line, including its investment in subsidiary, Kopin Taiwanese Corporation on January 16, 2013) and financial statement schedule of Kopin Corporation, and the effectiveness Kopin Corporation's internal control over financial reporting, appearing in the Annual Report on Form 10-K of Kopin Corporation for the year ended December 29, 2012.

/s/ DELOITTE & TOUCHE LLP

Boston, Massachusetts
August 8, 2013