

KOPIN CORP

FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 03/15/04

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 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.)

200 John Hancock Road, Taunton, MA
(Address of Principal Executive Offices)

02780-1042
(Zip Code)

KOPIN CORPORATION 2001 EQUITY INCENTIVE PLAN
(Full Title of the Plan)

with copies to:

John C.C. Fan
Chief Executive Officer
Kopin Corporation
200 John Hancock Road
Taunton, MA 02780-1042

(Name and address of agent for service)

John J. Concannon III, Esq.
Bingham McCutchen LLP
150 Federal Street
Boston, MA 02110

(508) 824-6696

(Telephone Number, Including Area Code, of Agent For Service)

(617) 951-8000

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 \$0.01 par value per share	1,100,000	\$5.67	\$6,237,000	\$791

* Estimated solely for the purpose of computing the registration fee pursuant to Rule 457(h) under the Securities Act of 1933, as amended (the "Securities Act"), based on the average of the high and low prices of the Registrant's Common Stock, \$0.01 par value per share, reported by the Nasdaq National Market on March 9, 2004.

PART II

Item 3. *Incorporation Of Documents By Reference .*

The following documents filed by Kopin Corporation (the “Registrant”) with the Securities and Exchange Commission (the “SEC”) are hereby incorporated by reference into this Registration Statement: (1) the Registrant’s Annual Report on Form 10-K for the fiscal year ended December 31, 2003, as filed by the Registrant with the SEC on March 15, 2004; (2) all other reports filed by the Registrant pursuant to Sections 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), since December 31, 2003; and (3) the description of the Common Stock of the Registrant, \$0.01 par value per share (the “Common Stock”), contained in the Registrant’s registration statement on Form S-1 filed with the SEC under Section 12(g) of the Exchange Act, including any amendment or report filed for the purpose of updating such description.

In addition, all documents filed by the Registrant 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.

Item 4. *Description Of Securities .*

Not applicable.

Item 5. *Interests Of Named Experts And Counsel .*

Not applicable.

Item 6. *Indemnification Of Directors And Officers .*

Section 145 of the Delaware General Corporation Law (the “DGCL”) empowers a Delaware corporation to indemnify its officers and directors and certain other persons to the extent and under the circumstances set forth therein.

The Amended and Restated Certificate of Incorporation and the Second Amended and Restated By-laws of the Registrant include provisions to (i) eliminate the personal liability of our 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 Registrant 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 Registrant has purchased an insurance policy covering its officers and directors with respect to certain liabilities arising under the Securities Act or otherwise.

Item 7. Exemption From Registration Claimed .

Not applicable.

Item 8. Exhibits .

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

<u>Exhibit No.</u>	<u>Description of Document</u>
4.1*	Kopin Corporation 2001 Equity Incentive Plan.
4.2**	Amendment to Kopin Corporation 2001 Equity Incentive Plan.
4.3	Amendment to Kopin Corporation 2001 Equity Incentive Plan.
5	Opinion of Bingham McCutchen LLP.
23.1	Consent of Deloitte & Touche LLP.
23.2	Consent of Bingham McCutchen LLP (included in Exhibit 5).
24	Power of Attorney (included on the signature page of this Registration Statement).

* Filed with the SEC on April 20, 2001 as Appendix B to Proxy Statement filed pursuant to Rule 14a-6 of the Exchange Act, File No. 000-19882, and incorporated herein by reference.

** Filed with the SEC on August 16, 2002 as Exhibit 4.4 to Registration Statement on Form S-8, File No. 333-98285, and incorporated herein by reference.

Item 9. Undertakings .

The Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made pursuant to this Registration Statement, a post-effective amendment to this Registration Statement 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.

(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.

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 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 Securities Exchange Act) 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.

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 described in Item 6 above, or otherwise, the Registrant has 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. 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.

Michael A. Wall

Director

/s/ Michael J. Landine

Director

March 10, 2004

Michael J. Landine

/s/ Richard A. Sneider

Chief Financial Officer
(Principal Accounting Officer
and Principal Financial Officer)

March 10, 2004

Richard A. Sneider

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description of Document</u>
4.1*	Kopin Corporation 2001 Equity Incentive Plan.
4.2**	Amendment to Kopin Corporation 2001 Equity Incentive Plan.
4.3	Amendment to Kopin Corporation 2001 Equity Incentive Plan.
5	Opinion of Bingham McCutchen LLP.
23.1	Consent of Deloitte & Touche LLP.
23.2	Consent of Bingham McCutchen LLP (included in Exhibit 5).
24	Power of Attorney (included on the signature page of this Registration Statement).

* Filed with the SEC on April 20, 2001 as Appendix B to Proxy Statement filed pursuant to Rule 14a-6 of the Exchange Act, File No. 000-19882, and incorporated herein by reference.

** Filed with the SEC on August 16, 2002 as Exhibit 4.4 to Registration Statement on Form S-8, File No. 333-98285, and incorporated herein by reference.

KOPIN CORPORATION**Kopin Corporation 2001 Equity Incentive Plan Amendment**

The Board of Directors of Kopin Corporation (the “Company”), pursuant to authority reserved in Section 13 of the 2001 Equity Incentive Plan of the Company (the “2001 Plan”), amended the 2001 Plan as follows, which such action was ratified by the stockholders of the Company on April 24, 2003:

Effective as of March 7, 2003, Sections 4 and 8.1 of the 2001 Plan are deleted in their entirety and replaced with the following:

4. Stock Subject to the Plan . At no time shall the number of shares of Common Stock issued pursuant to or subject to outstanding Awards granted under the Plan exceed 3,500,000 shares of Common Stock; *subject, however* , to the provisions of Section 8 of the Plan. For purposes of applying the foregoing limitation, if any Option expires, terminates, or is cancelled for any reason without having been exercised in full, or if any Award of Restricted Stock is forfeited by the recipient, the shares not purchased by the Optionee or forfeited by the recipient shall again be available for Awards to be granted under the Plan. Shares of Common Stock issued pursuant to the Plan may be either authorized but unissued shares or shares held by the Company in its treasury.

8.1. Adjustment for Corporate Actions . All of the share numbers set forth in the Plan reflect the capital structure of the Company as of March 7, 2003. Subject to Sections 8.2 and 8.3, if subsequent to that date the outstanding shares of Common Stock (or any other securities covered by the Plan by reason of the prior application of this Section) are increased, decreased, or exchanged for a different number or kind of shares or other securities, or if additional shares or new or different shares or other securities are distributed with respect to shares of Common Stock or other securities, through merger, consolidation, sale of all or substantially all the property of the Company, reorganization, recapitalization, reclassification, stock dividend, stock split, reverse stock split, or other distribution with respect to such shares of Common Stock, or other securities, an appropriate and proportionate adjustment will be made in (i) the maximum numbers and kinds of shares provided in Section 4, (ii) the numbers and kinds of shares or other securities subject to the then outstanding Awards, (iii) the exercise price for each share or other unit of any other securities subject to then outstanding Options (without change in the aggregate purchase price as to which such Options remain exercisable), and (iv) the repurchase price of each share of Restricted Stock then subject to a Risk of Forfeiture in the form of a Company repurchase right.

IN WITNESS WHEREOF, the Company has adopted this Amendment, effective as of the 7th day of March, 2003.

KOPIN CORPORATION

By: /s/ John C.C. Fan

John C.C. Fan
President and Chief Executive Officer

[BINGHAM McCUTCHEN LLP LETTERHEAD]

March 10, 2004

Kopin Corporation
695 Myles Standish Boulevard
Taunton, Massachusetts 02780-1042

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 10, 2004 (the “Registration Statement”), of 1,100,000 shares (the “Shares”) of common stock, par value \$0.01 per share (the “Common Stock”), of Kopin Corporation, a Delaware corporation (the “Company”), which are or will be issuable to employees, directors, consultants and advisors of the Company upon the exercise of options granted pursuant to the Company’s 2001 Equity Incentive Plan (the “2001 Plan”) or which the Company may sell or grant as restricted stock pursuant to the 2001 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 have further assumed that all options granted or to be granted pursuant to the 2001 Plan were or will be validly granted in accordance with the terms of the 2001 Plan, that all Shares to be issued upon exercise of such options will be issued in accordance with the terms of such options and the 2001 Plan, and that all Shares sold or granted as restricted stock will be sold or granted in accordance with the terms of the 2001 Plan.

This opinion is limited solely to the Delaware General Corporation Law, as applied by courts located in Delaware, the applicable provisions of the Delaware Constitution and the reported judicial decisions interpreting those laws.

Based upon and subject to the foregoing, we are of the opinion that:

1. Upon the issuance and the delivery of the Shares upon the exercise of options granted pursuant to the 2001 Plan in accordance with the terms of such options and the 2001 Plan, and upon the Company’s receipt of the full exercise price therefore, as determined by the Board of Directors of the Company and as specified in the documents governing such grants and the 2001

Plan, the Shares will be validly issued, fully paid, and nonassessable shares of the Company's Common Stock.

2. Upon the issuance and delivery of the Shares in the form of restricted stock in accordance with the terms of the awards of such restricted stock and the 2001 Plan, the Shares will be validly issued, fully paid, and nonassessable shares of the Company's Common Stock.

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

BINGHAM McCUTCHEN LLP

INDEPENDENT AUDITORS' CONSENT

We consent to the incorporation by reference in this Registration Statement of Kopin Corporation on Form S-8 of our report dated March 5, 2004 (which report expresses an unqualified opinion and includes an explanatory paragraph relating to a change in accounting for goodwill and intangibles in 2002), appearing in the Annual Report on Form 10-K of Kopin Corporation for the year ended December 31, 2003.

/s/ Deloitte & Touche LLP

Boston, Massachusetts

March 10, 2004