

MITEK SYSTEMS INC  
Form S-8  
March 07, 2012

As filed with the Securities and Exchange Commission on March 7, 2012

Registration No. 333-

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

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

**MITEK SYSTEMS, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**87-0418827**  
(I.R.S. Employer  
Identification No.)

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**8911 Balboa Ave., Suite B**

**San Diego, California 92123**

(Address of Principal Executive Offices)(Zip Code)

**2012 Stock Incentive Plan**

(Full title of the plan)

**Russell C. Clark**

**Chief Financial Officer**

**Mitek Systems, Inc.**

**8911 Balboa Ave. Suite B**

**San Diego, CA 92123**

**(858) 309-1700**

(Name and address of agent for service)

**(858) 309-1700**

(Telephone number, including area code, of agent for service)

*Copy to:*

**Carl Sanchez, Esq.**

**Paul Hastings LLP**

**4747 Executive Drive, 12<sup>th</sup> Floor**

**San Diego, California 92121**

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):

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Large accelerated filer

Accelerated filer

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

Smaller reporting company

**CALCULATION OF REGISTRATION FEE**

<b>Title of securities</b>	<b>Amount</b>	<b>Proposed</b>	<b>Proposed</b>	<b>Amount of</b>
<b>to be registered</b>	<b>to be</b>	<b>maximum</b>	<b>maximum</b>	<b>registration fee</b>
	<b>registered (1)</b>	<b>per share</b>	<b>offering price</b>	
Common Stock, par value \$0.001 per share	4,654,997 (2)	\$11.39(3)	\$53,020,415.83(3)	\$6,076.14
Common Stock, par value \$0.001 per share	441,335 (4)	\$11.05(5)	\$4,876,751.75(5)	\$558.88

- (1) The number of shares of common stock, par value \$0.001 per share (the Common Stock ), of Mitek Systems, Inc. (the Registrant ) to be registered pursuant hereto consists of the aggregate number of shares that may be issued and sold upon the vesting and/or exercise of equity awards granted pursuant to the Registrant s 2012 Incentive Plan (the 2012 Plan ), as adopted by the board of directors of the Registrant on January 16, 2012 and approved by the Registrant s stockholders at the Registrant s annual meeting of stockholders on February 22, 2012. Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the Securities Act ), this registration statement also covers any additional shares of Common Stock that may be necessary to adjust the number of shares being issued pursuant to the 2012 Plan as a result of stock splits, stock dividends or similar transactions.
- (2) Represents 2,000,000 shares of Common Stock initially available for grants under the 2012 Plan less 441,335 shares outstanding under the 2012 Plan (as referenced in footnote 4 below) plus 3,096,332 shares of Common Stock subject to awards, that in each case would, at any time after February 22, 2012, otherwise return to the available pool of unissued shares reserved for awards under the Registrant s 1999 Stock Option Plan, 2000 Stock Option Plan, 2002 Stock Option Plan, 2006 Stock Option Plan and the 2010 Stock Option Plan (collectively, the Prior Plans ). There were no awards granted under the Prior Plans after the approval of the 2012 Plan by the Registrant s stockholders on February 22, 2012.
- (3) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(h) and Rule 457(c) under the Securities Act, based upon the average of the high and low prices of the Common Stock on March 2, 2012, as quoted on the NASDAQ Capital Market.
- (4) Represents 441,335 shares of Common Stock subject to options outstanding under the 2012 Plan.
- (5) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(h) of the Securities Act. The price per share and aggregate offering price are based upon the weighted average exercise price of the outstanding options under the 2012 Plan.

**PART I**

**INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS**

**Item 1. Plan Information.**

Not required to be filed with this registration statement.\*

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

Not required to be filed with this registration statement.\*

\* The documents containing the information specified in Item 1. Plan Information and Item 2. Registrant Information and Employee Plan Annual Information of this registration statement will be sent or given to employees as specified by Rule 428(b)(1) under the Securities Act of 1933, as amended (the Securities Act). In accordance with the Note to Part I of Form S-8, such documents are not required to be, and are not, filed with the U.S. Securities and Exchange Commission (the Commission) either as part of this registration statement or as a prospectus or prospectus supplement pursuant to Rule 424 under the Securities Act. These documents and the documents incorporated by reference in this registration statement pursuant to Item 3 of Part II of this registration statement, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

The following documents filed with the Commission by the Registrant are incorporated by reference in this Registration Statement on Form S-8 (the Registration Statement):

- (a) The Registrant's annual report on Form 10-K for the fiscal year ended September 30, 2011 as filed with the Commission on December 15, 2011;
- (b) The Registrant's quarterly report on Form 10-Q for its fiscal quarter ended December 31, 2011 as filed with the Commission on February 10, 2012;
- (c) The Registrant's Current Report on Form 8-K filed with the Commission on October 13, 2011 and February 23, 2012; and
- (d) The description of the Common Stock contained in the Registrant's registration statement on Form SB-2 (File No. 333-07787), initially filed with the Commission on July 9, 1996, including any subsequent amendment or report filed for the purpose of amending such description.

All reports and other documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act of 1934, as amended, after the date of this Registration Statement and 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, are incorporated by reference in this Registration Statement and are a part hereof from the date of filing of such reports and other documents, except as to any portion of any such report or other document furnished under current Items 2.02 or 7.01 of Form 8-K that is not deemed filed under such provisions. Any statement contained in a report or other 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 herein or in any other subsequently filed report or other document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.



**Item 4. Description of Securities.**

Not applicable.

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

Not applicable.

**Item 6. Indemnification of Directors and Officers.**

The Registrant's restated certificate of incorporation eliminates the personal liability of the directors of the Registrant for monetary damages for breach of fiduciary duties as a director of the Registrant except: (i) for any breach of the directors' duty of loyalty to the Registrant or its stockholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) for unlawful dividends or distributions; or (iv) for any transaction from which the director derived an improper personal benefit.

The Registrant's bylaws permit the Registrant to indemnify its directors, officers, employees and agents to the fullest extent permitted by the Delaware General Corporation Law (the "DGCL"). Section 145 of the DGCL provides that a director, officer, employee or agent of the Registrant who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, shall be indemnified and held harmless by the Registrant to the fullest extent authorized by the DGCL against all expense, liability and loss actually and reasonably incurred or suffered by such person if he or she acted in good faith and in a manner he or she reasonably believed to be in the best interests of the Registrant, and, with respect to any criminal proceeding, had no reasonable cause to believe that the conduct was unlawful. If it is determined that the conduct of such person meets these standards, such person may be indemnified for expenses incurred and amounts paid in connection with such proceeding if actually and reasonably incurred in connection therewith.

If such a proceeding is brought by or on behalf of the Registrant (i.e., a derivative suit), such person may be indemnified against all expenses actually and reasonably incurred if such person acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the corporation and its stockholders. There can be no indemnification with respect to any matter as to which such person is adjudged to be liable to the Registrant unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as the Court of Chancery or such other court shall deem proper.

The Registrant may advance expenses incurred in defending a proceeding upon receipt of an undertaking to repay any amount so advanced if it is ultimately determined that the person is not eligible for indemnification.

The indemnification rights provided in Section 145 of the DGCL are not exclusive of additional rights to indemnification for breach of duty to the Registrant and its stockholders to the extent any such additional rights are authorized in the Registrant's restated certificate of incorporation and are not exclusive of any other rights to indemnification under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office.

The Registrant has entered into a separate Indemnification Agreement (the "Indemnification Agreement") with each of its directors and executive officers (each, an "Indemnitee"). Under the Indemnification Agreement, each Indemnitee is entitled to be indemnified against all expenses, judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by or on behalf of such Indemnitee in connection with any claims, proceedings or other actions brought against such Indemnitee as a result of the Indemnitee's service to the Registrant, provided that the Indemnitee (i) acted in good faith; (ii) reasonably believed the action was in the Registrant's best interest; and (iii) in criminal proceedings, reasonably believed his or her conduct was not unlawful. Additionally, the Indemnification Agreement entitles the Indemnitee to contribution of expenses from the Registrant in any proceeding in which the Registrant is jointly liable with such Indemnitee, but for which indemnification is not otherwise available.

The Indemnification Agreement also entitles each Indemnitee to advancement of expenses incurred by an Indemnitee in connection with any claim, proceeding or other action in advance of the final adjudication of any such claim, proceeding or other action, provided the Indemnitee agrees to reimburse the Registrant for all such advances if it shall ultimately be determined that the Indemnitee is not entitled to indemnification.

**Item 7. Exemption From Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

The following is a list of exhibits filed as part of this Registration Statement, which are incorporated herein:

<b>Exhibit No.</b>	<b>Exhibit Description</b>
4.1	Restated Certificate of Incorporation (incorporated by reference to the Company's Registration Statement on Form S-3 (File No. 333-177965) filed with the Commission on November 14, 2011).
4.2	Amended and Restated Bylaws (incorporated by reference to the Company's Annual Report on Form 10-K for the fiscal year ended September 30, 1987).



- 4.3 Specimen Common Stock Certificate (incorporated by reference to the Company's Registration Statement on Form S-3 (File No. 333-177965) filed with the Commission on November 14, 2011).
- 4.10 Mitek Systems, Inc. 2012 Incentive Plan and the forms of agreement related thereto.
- 5.1 Opinion of Paul Hastings LLP.
- 23.1 Consent of Paul Hastings LLP (contained in Exhibit 5.1 to this Registration Statement).
- 23.2 Consent of Independent Registered Public Accounting Firm, Mayer Hoffman McCann, P.C.
- 24.1 Power of Attorney (contained on the signature pages of this Registration Statement).

**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 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 a 20 percent 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 (a)(1)(i) and (a)(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 Exchange Act that are incorporated by reference 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.

(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 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 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 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 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 the 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, 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 San Diego, State of California, on this 7th day of March, 2012.

**MITEK SYSTEMS, INC.**

By: /s/ James B. DeBello  
James B. DeBello  
President and Chief Executive Officer

**POWER OF ATTORNEY**

**KNOW ALL PERSONS BY THESE PRESENTS**, that each person whose signature appears below constitutes and appoints, jointly and severally, James B. DeBello and Russell C. Clark his or her attorneys-in-fact, each with the power of substitution, for him or her in any and all capacities, to sign any amendments to this Registration Statement on Form S-8 (including post-effective amendments), and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Commission, hereby ratifying and confirming all that each of said attorneys-in-fact, or his or their substitute or substitutes, may do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ James B. DeBello	President and Chief Executive Officer and Director	March 7, 2012
James B. DeBello	<i>(Principal Executive Officer)</i>	
/s/ Russell C. Clark	Chief Financial Officer	March 7, 2012
Russell C. Clark	<i>(Principal Financial and Accounting Officer)</i>	
/s/ John M. Thornton	Chairman of the Board of Directors	March 7, 2012
John M. Thornton		
/s/ Vinton Cunningham	Director	March 7, 2012
Vinton Cunningham		
/s/ Gerald I. Farmer	Director	March 7, 2012
Gerald I. Farmer		
/s/ Sally B. Thornton	Director	March 7, 2012
Sally B. Thornton		
/s/ William P. Tudor	Director	March 7, 2012
William P. Tudor		

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/s/ Alex W. Hart

Director

March 7, 2012

Alex W. Hart

**EXHIBIT INDEX**

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