

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
WASHINGTON, D.C. 20549

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

DESKTOP METAL, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

63 3rd Avenue, Burlington, MA
(Address of Principal Executive Offices)

83-2044042
(I.R.S. Employer
Identification No.)

01803
(Zip Code)

DESKTOP METAL, INC. 2020 INCENTIVE AWARD PLAN
(Full title of the plan)

**Meg Broderick
General Counsel
Desktop Metal, Inc.
63 3rd Avenue
Burlington, MA 01803**
(Name and address of agent for service)

(978) 224-1244
(Telephone number, including area code, of agent for service)

**Copies to:
Daniel S. Hoffman, Esq.
Elisabeth M. Martin, Esq.
Latham & Watkins LLP
200 Clarendon Street
Boston, Massachusetts 02116
(617) 880-6000**

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

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input checked="" type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

EXPLANATORY NOTE

Pursuant to General Instruction E to Form S-8, this Registration Statement is being filed for the purpose of registering an additional 49,020,732 shares of Class A common stock, par value \$0.0001 per share ("Class A Common Stock"), of Desktop Metal, Inc. (the "Registrant") to be issued pursuant to the Desktop Metal, Inc. 2020 Incentive Award Plan (the "2020 Plan"), pursuant to the "evergreen" provision in the 2020 Plan, which allows for an annual increase in the number of shares of the Company's Class A Common Stock reserved and available for issuance thereunder. The additional shares being registered are of the same class as those shares previously registered on the effective registration statement on [Form S-8 filed with the Commission on June 2, 2021 \(File No. 333-256722\)](#) (the "2021 Registration Statement"). The contents of the 2021 Registration Statement, as amended, or as modified or superseded pursuant to Rule 412 under the Securities Act of 1933, as amended, are incorporated by reference into this Registration Statement.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 8. Exhibits.

Exhibit No.	Description
4.1	Second Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.2 to the Current Report on Form 8-K filed on December 14, 2020).
4.2	Amended and Restated Bylaws (incorporated by reference to Exhibit 3.3 to the Current Report on Form 8-K filed on December 14, 2020).
4.3	Specimen Class A Common Stock Certificate (incorporated by reference to Exhibit 4.2 to the Registration Statement on Form S-1 filed on March 8, 2019).
5.1*	Opinion of Latham & Watkins LLP.
23.1*	Consent of independent registered public accounting firm (Deloitte & Touche LLP).
23.2*	Consent of Latham & Watkins LLP (included in Exhibit 5.1).
24.1*	Powers of Attorney (included on the signature page of this Registration Statement).
99.1	2020 Incentive Award Plan (incorporated by reference to Exhibit 10.11 to the Annual Report on Form 10-K filed on March 15, 2021).
99.2	Form of Stock Option Agreement under the 2020 Incentive Award Plan (incorporated by reference to Exhibit 10.20 to the Registration Statement on Form S-4 filed on September 15, 2020).
99.3	Form of RSU Agreement under the 2020 Incentive Award Plan (incorporated by reference to Exhibit 10.21 to the Registration Statement on Form S-4 filed on September 15, 2020).
99.4	Form of Restricted Stock Agreement under the 2020 Incentive Award Plan (incorporated by reference to Exhibit 10.22 to the Registration Statement on Form S-4 filed on September 15, 2020).
99.5	Form of Performance RSU Agreement under the 2020 Incentive Award Plan (incorporated by reference to Exhibit 10.11 to the Annual Report on Form 10-K filed on March 1, 2023).
107*	Filing Fee Table.

* Filed herewith.

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 Burlington, Commonwealth of Massachusetts, on this 15th day of March 2024.

DESKTOP METAL, INC.

By: /s/ Ric Fulop
 Ric Fulop
 Chief Executive Officer and Chairman

POWER OF ATTORNEY AND SIGNATURES

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Ric Fulop and Jason Cole, and each of them, as such person's true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution in each of them, for such person in such person's, place and stead, in any and all capacities, to sign for us and in our names in the capacities indicated below the Registration Statement on Form S-8 of Desktop Metal, Inc., and any or all amendments (including post-effective amendments), and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite or necessary to be done in connection therewith and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, 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, as amended, this Registration Statement on Form S-8 has been signed by the following persons in the capacities held on the dates indicated.

Signature	Title	Date
<u>/s/ Ric Fulop</u> Ric Fulop	Chairman and Chief Executive Officer (principal executive officer)	March 15, 2024
<u>/s/ Jason Cole</u> Jason Cole	Chief Financial Officer (principal financial officer and principal accounting officer)	March 15, 2024
<u>/s/ Scott Dussault</u> Scott Dussault	Director	March 15, 2024
<u>/s/ James Eisenstein</u> James Eisenstein	Director	March 15, 2024
<u>/s/ Dayna Grayson</u> Dayna Grayson	Director	March 15, 2024
<u>/s/ Wen Hsieh</u> Wen Hsieh	Director	March 15, 2024
<u>/s/ Jeff Immelt</u> Jeff Immelt	Director	March 15, 2024
<u>/s/ Stephen Nigro</u> Stephen Nigro	Director	March 15, 2024
<u>/s/ Steve Papa</u>	Director	March 15, 2024

Steve Papa

/s/ Bilal Zuberi
Bilal Zuberi

Director

March 15, 2024

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LATHAM & WATKINS LLP

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London Tokyo
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Madrid

March 15, 2024

Desktop Metal, Inc.
63 3rd Avenue
Burlington, Massachusetts 01803

Re: Registration Statement on Form S-8

To the addressee set forth above:

We have acted as special counsel to Desktop Metal, Inc., a Delaware corporation (the “*Company*”), in connection with the preparation and filing by the Company with the Securities and Exchange Commission (the “*Commission*”) of a registration statement on Form S-8 (the “*Registration Statement*”) under the Securities Act of 1933, as amended (the “*Act*”), relating to the issuance by the Company of up to an aggregate of 49,020,732 shares of common stock of the Company, \$0.0001 par value per share (the “*Shares*”), issuable under the Desktop Metal, Inc. 2020 Incentive Award Plan (the “*Plan*”). This opinion is being furnished in connection with the requirements of Item 601(b) (5) of Regulation S-K under the Act, and no opinion is expressed herein as to any matter pertaining to the contents of the Registration Statement or the prospectus forming a part thereof, other than as expressly stated herein with respect to the issuance of the Shares.

As such counsel, we have examined such matters of fact and questions of law as we have considered appropriate for purposes of this letter. With your consent, we have relied upon certificates and other assurances of officers of the Company and others as to factual matters without having independently verified such factual matters. We are opining herein as to the General Corporation Law of the State of Delaware (the “*DGCL*”), and we express no opinion with respect to any other laws.

Subject to the foregoing and the other matters set forth herein, it is our opinion that, as of the date hereof, when the Shares shall have been duly registered on the books of the transfer agent and registrar therefor in the name or on behalf of the recipients thereof, and have been issued by the Company for legal consideration in excess of par value in the circumstances contemplated by the Plan, assuming in each case that the individual grants or awards under the Plan are duly authorized by all necessary corporate action and duly granted or awarded and exercised in accordance with the requirements of law and the Plan (and the agreements and awards duly adopted thereunder and in accordance therewith), the issue and sale of the Shares will have been duly authorized by all necessary corporate action of the Company, and the Shares will be validly issued, fully paid and nonassessable. In rendering the foregoing opinion, we have assumed that the Company will comply with all applicable notice requirements regarding uncertificated shares provided in the DGCL.

March 15, 2024
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LATHAM & WATKINS LLP

This opinion is for your benefit in connection with the Registration Statement and may be relied upon by you and by persons entitled to rely upon it pursuant to the applicable provisions of the Act. We consent to your filing this opinion as an exhibit to the Registration Statement. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission thereunder.

Sincerely,
/s/ Latham & Watkins 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 15, 2024, relating to the financial statements of Desktop Metal, Inc. and the effectiveness of Desktop Metal, Inc.'s internal control over financial reporting, appearing in the Annual Report on Form 10-K of Desktop Metal, Inc. for the year ended December 31, 2023.

/s/ Deloitte & Touche LLP

Boston, Massachusetts

March 15, 2024

CALCULATION OF FILING FEE TABLES

FORM S-8
(Form Type)Desktop Metal, Inc.
(Exact Name of Registrant as Specified in its Charter)

Table 1—Newly Registered Securities

Security Type	Security Class Title	Fee Calculation Rule	Amount Registered ⁽¹⁾	Proposed Maximum Offering Price Per Unit ⁽¹⁾	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Equity	Class A common stock, \$0.0001 par value per share	Other ⁽²⁾	49,020,732 ⁽³⁾	\$0.6425	\$31,495,820.31	0.00014760	\$4,648.78
Total Offering Amounts						\$31,495,820.31	\$4,648.78
Total Fee Offsets							—
Net Fee Due							\$4,648.78

- (1) Pursuant to Rule 416 under the Securities Act of 1933, as amended, this registration statement also covers any additional number of shares of Class A common stock issuable upon stock splits, stock dividends or other distribution, recapitalization or similar events with respect to the shares of Class A common stock being registered pursuant to this registration statement.
- (2) Estimated solely for purposes of calculating the registration fee pursuant to Rules 457(c) and 457(h) under the Securities Act of 1933, as amended, and based on the average of the high and low sales price per share of the registrant's Class A common stock on the New York Stock Exchange on March 11, 2024.
- (3) Includes 32,757,148 shares of Class A common stock available for future issuance under the Desktop Metal, Inc. 2020 Incentive Award Plan (the "2020 Plan") pursuant to the automatic annual "evergreen" increase provision in the 2020 Plan, and an additional 16,263,584 shares of Class A common stock that may become issuable under the 2020 Plan.