APPLE INC
Form S-8
November 01, 2012

As filed with the Securities and Exchange Commission on November 1, 2012

Registration No. _____

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

APPLE INC.

(Exact Name of Registrant as Specified in Its Charter)

California	**94-2404110**
(State or Other Jurisdiction of Incorporation or Organization)	(I.R.S. Employer Identification No.)

1 Infinite Loop

Cupertino, California 95014

(Address, Including Zip Code, of Principal Executive Offices)

AuthenTec, Inc. 2007 Stock Incentive Plan

AuthenTec, Inc. 2010 Incentive Plan, as amended

(Full Title of the Plans)

D. Bruce Sewell

Senior Vice President, General Counsel and Secretary

Apple Inc.

1 Infinite Loop

Cupertino, California 95014

(408) 996-1010

(Name, Address and Telephone Number, Including Area Code, of Agent for Service)

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 þ	Accelerated filer ¨
Non-accelerated filer ¨	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, no par value, newly reserved under the AuthenTec, Inc. 2007 Stock Incentive Plan	2,213[1] shares	$190.43[2]	$421,421.59[2]	$57.49[2]
Common Stock, no par value, newly reserved under the AuthenTec, Inc. 2010 Incentive Plan, as amended	26,734[1] shares	$211.71[2]	$5,659,855.14[2]	$772.01[2]

[1] This Registration Statement covers, in addition to the number of shares of Apple Inc., a California corporation (the Company or the Registrant), common stock, no par value (the Common Stock), stated above, options and other rights to purchase or

acquire the shares of Common Stock covered by this Registration Statement and, pursuant to Rule 416(c) under the Securities Act of 1933, as amended (the Securities Act), an additional indeterminate number of shares, options and rights that may be offered or issued pursuant to the AuthenTec, Inc. 2007 Stock Incentive Plan and the AuthenTec, Inc. 2010 Incentive Plan, as amended (collectively, the Plans), as a result of one or more adjustments under the Plans to prevent dilution resulting from one or more stock splits, stock dividends or similar transactions. The Plans were assumed by the Company in connection with the acquisition of AuthenTec, Inc. by the Company.

(2) Pursuant to Securities Act Rule 457(h), the maximum offering price, per share and in the aggregate, and the registration fee were calculated based upon the weighted-average exercise price of the outstanding options under each Plan.

The Exhibit Index for this Registration Statement is at page 7.

PART I

INFORMATION REQUIRED IN THE

SECTION 10(a) PROSPECTUS

The document(s) containing the information specified in Part I of Form S-8 will be sent or given to participants as specified by Securities Act Rule 428(b)(1).

PART II

INFORMATION REQUIRED IN THE

REGISTRATION STATEMENT

Item 3. Incorporation of Certain Documents by Reference

The following documents of the Company filed with the Securities and Exchange Commission (the Commission) are incorporated herein by reference:

(a) The Company s Annual Report on Form 10-K for its fiscal year ended September 29, 2012, filed with the Commission on October 31, 2012 (Commission File No. 000-10030);

(b) All other reports of the Registrant filed with the Commission pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the Registrant s Annual Report referred to in (a) above; and

(c) The description of the Company s Common Stock contained in its Registration Statement on Form 8-A filed with the Commission on October 30, 1981 (Commission File No. 000-10030), and any other amendment or report filed for the purpose of updating such description.

All documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act), prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of filing of such documents; provided, however, that documents or information deemed to have been furnished and not filed in accordance with Commission rules shall not be deemed incorporated by reference into this Registration Statement. Any statement contained herein or in a document, all or a portion of which is 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 document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or amended, to constitute a part of this Registration Statement.

Item 4. Description of Securities

Not applicable.

Item 5. Interests of Named Experts and Counsel

As required by Item 601(b)(5) of Regulation S-K promulgated under the Securities Act, Gene D. Levoff, Director, Corporate Law and Assistant Secretary of the Registrant, has issued an opinion of counsel as to the legality of the shares of the Registrant s Common Stock being registered pursuant to this Registration Statement.

Item 6. Indemnification of Directors and Officers

Section 317 of the California General Corporations Law (the CGCL) authorizes a court to award, or a corporation s board of directors to grant, indemnity to directors and officers who are parties or are threatened to be made parties to any proceeding (with certain exceptions) by reason of the fact that the person is or was an agent of the corporation, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with the proceeding if that person acted in good faith and in a manner the person reasonably believed to be in the best interests of the corporation, and in the case of a criminal proceeding, had no reasonable cause to believe the conduct of the person was unlawful.

Section 204 of the CGCL provides that a corporation s articles of incorporation may not limit the liability of directors (i) for acts or omissions that involve intentional misconduct or a knowing and culpable violation of law, (ii) for acts or omissions that a director believes to be contrary to the best interests of the corporation or its shareholders or that involve the absence of good faith on the part of the director, (iii) for any transaction from which a director derived an improper personal benefit, (iv) for acts or omissions that show a reckless disregard for the director s duty to the corporation or its shareholders in circumstances in which the director was aware, or should have been aware, in the ordinary course of performing a director s duties, of a risk of a serious injury to the corporation or its shareholders, (v) for acts or omissions that constitute an unexcused pattern of inattention that amounts to an abdication of the director s duty to the corporation or its shareholders, (vi) under Section 310 of the CGCL (concerning transactions between corporations and directors or corporations having interrelated directors) or (vii) under Section 316 of the CGCL (concerning directors liability for distributions, loans, and guarantees).

Section 204 further provides that a corporation s articles of incorporation may not limit the liability of directors for any act or omission occurring prior to the date when the provision became effective or any act or omission as an officer, notwithstanding that the officer is also a director or that his or her actions, if negligent or improper, have been ratified by the directors. Further, Section 317 has no effect on claims arising under federal or state securities laws and does not affect the availability of injunctions and other equitable remedies available to a corporation s shareholders for any violation of a director s fiduciary duty to the corporation or its shareholders.

In accordance with Section 317, the Restated Articles of Incorporation, as amended (the Articles), of the Company limit the liability of a director to the Company or its shareholders for monetary damages to the fullest extent permissible under California law. The Articles further authorize the Company to provide indemnification to its agents (including officers and directors), subject to the limitations set forth above. The Articles and the Company s By-Laws (the By-Laws) further provide for indemnification of corporate agents to the maximum extent permitted by the CGCL.

Pursuant to the authority provided in the Articles and By-Laws, the Company has entered into indemnification agreements with each of its executive officers and directors, indemnifying them against certain potential liabilities that may arise as a result of their service to the Company, and providing for certain other protection. The Company also maintains insurance policies which insure its officers and directors against certain liabilities.

The foregoing summaries are necessarily subject to the complete text of the statute, the Articles, the By-Laws and the agreements referred to above and are qualified in their entirety by reference thereto.

Item 7. Exemption from Registration Claimed

Not applicable.

Item 8. Exhibits

See the attached Exhibit Index at page 7, which is incorporated herein by reference.

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 this Registration Statement; and

(iii) 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;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) 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 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.

(c) 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 provisions described in Item 6 above, 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 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 Form S-8 Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Cupertino, State of California, on November 1, 2012.

APPLE INC.

By: /s/ PETER OPPENHEIMER
Peter Oppenheimer
Senior Vice President,
Chief Financial Officer

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

Signature	Title	Date
* /s/ TIMOTHY D. COOK Timothy D. Cook	Chief Executive Officer and Director (Principal Executive Officer)	November 1, 2012
/s/ PETER OPPENHEIMER Peter Oppenheimer	Senior Vice President, Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	November 1, 2012
* /s/ WILLIAM V. CAMPBELL William V. Campbell	Director	November 1, 2012
* /s/ MILLARD S. DREXLER Millard S. Drexler	Director	November 1, 2012
* /s/ ALBERT A. GORE, JR. Albert A. Gore, Jr.	Director	November 1, 2012
* /s/ ROBERT A. IGER Robert A. Iger	Director	November 1, 2012
* /s/ ANDREA JUNG Andrea Jung	Director	November 1, 2012
* /s/ ARTHUR D. LEVINSON Arthur D. Levinson	Chairman of the Board	November 1, 2012

* /s/ RONALD D. SUGAR	Director	November 1, 2012

Ronald D. Sugar

* By: /s/ GENE D. LEVOFF
Gene D. Levoff
Attorney-in-Fact

EXHIBIT INDEX

Exhibit Number	Description of Exhibit
4.1	AuthenTec, Inc. 2007 Stock Incentive Plan.
4.2	AuthenTec, Inc. 2010 Incentive Plan.
4.3	AuthenTec, Inc. First Amendment to 2010 Incentive Plan
5.1	Opinion of counsel as to legality of securities being registered.
23.1	Consent of counsel (included in Exhibit 5.1).
23.2	Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm.
24.1	Power of Attorney.