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

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

Aterian, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

83-1739858
(I.R.S. Employer
Identification No.)

**37 East 18th Street, 7th Floor
New York, NY 10003**
(Address of Principal Executive Offices) (Zip Code)

Amended and Restated Aterian, Inc. 2018 Equity Incentive Plan
(Full title of the plan)

**Yaniv Sarig
Chief Executive Officer
Aterian, Inc.
37 East 18th Street, 7th Floor
New York, NY 10003
(347) 676-1681**
(Name, address and telephone number, including area code, of agent for service)

Copies to:

**Joseph A. Risico, Esq.
Chief Legal Officer
Aterian, Inc.
37 East 18th Street, 7th Floor
New York, NY 10003**

**Jeffrey T. Hartlin, Esq.
Samantha H. Eldredge, Esq.
Paul Hastings LLP
1117 S. California Avenue
Palo Alto, California 94304**

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

Non-accelerated filer

Accelerated filer

Smaller reporting company

Emerging growth company

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

Aterian, Inc. (the “Registrant”) has prepared this registration statement (this “Registration Statement”) in accordance with the requirements of Form S-8 under the Securities Act to register 3,599,864 additional shares of Common Stock reserved for issuance under the Amended and Restated Aterian, Inc. 2018 Equity Incentive Plan (the “2018 Plan”).

Pursuant to the Registration Statements on Form S-8 (File Nos. 333-232087, 333-251295 and 333-256612) filed by the Registrant with the Securities and Exchange Commission (the “Commission”) on June 13, 2019, December 11, 2020 and May 28, 2021 (the “Prior Registration Statements”), the Registrant previously registered an aggregate of 4,537,688 shares of Common Stock under the 2018 Plan.

In accordance with General Instruction E to Form S-8, the contents of the Prior Registration Statements are hereby incorporated by reference.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE.

The following documents filed by the Registrant with the Commission are hereby incorporated by reference into this Registration Statement:

- (a) The Registrant’s Annual Report on [Form 10-K](#) for the fiscal year ended December 31, 2021, filed with the Commission on March 16, 2022;
- (b) The Registrant’s Annual Report on [Form 10-K/A](#) for the fiscal year ended December 31, 2021, filed with the Commission on March 28, 2022;
- (c) The Registrant’s Current Reports on Form 8-K filed with the Commission on [February 1, 2022](#), [March 4, 2022](#) and [March 8, 2022 \(other than with respect to Item 2.02 and Exhibit 99.1 thereof\)](#);
- (d) The description of the Common Stock set forth in the Registrant’s Registration Statement on [Form 8-A](#) (File No. 001-38937), filed with the Commission on June 11, 2019, including any amendments or reports filed for the purpose of updating such description, including the description of the Common Stock included as [Exhibit 4.9](#) to the Registrant’s Annual Report on Form 10-K for the year ended December 31, 2021, filed with the Commission on March 16, 2022.

All other reports and other documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 or 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 of this Registration Statement from the date of the filing of such reports and documents, except as to any portion of any future annual or quarterly report to stockholders or document or current report furnished under Items 2.02 or 7.01 of Form 8-K that is not deemed filed under such provisions.

For the purposes of this Registration Statement, any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded to the extent that a statement contained herein or in any other subsequently filed document that 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 superseded, to constitute a part of this Registration Statement.

You should rely only on the information provided or incorporated by reference in this Registration Statement or any related prospectus. The Registrant has not authorized anyone to provide you with different information. You should not assume that the information in this Registration Statement or any related prospectus is accurate as of any date other than the date on the front of the document.

You may contact the Registrant in writing or orally to request copies of the above-referenced filings, without charge (excluding exhibits to such documents unless such exhibits are specifically incorporated by reference into the information incorporated into this Registration Statement). Requests for such information should be directed to:

Aterian, Inc.
37 East 18th Street, 7th Floor
New York, NY 10003
(347) 676-1681
Attn: Chief Executive Officer

ITEM 8. EXHIBITS.

Exhibit Number	Description
3.1	<u>Amended and Restated Certificate of Incorporation (previously filed as Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed on June 14, 2019 and incorporated herein by reference).</u>
3.2	<u>Certificate of Amendment to the Amended and Restated Certificate of Incorporation (previously filed as Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed on April 30, 2021 and incorporated herein by reference).</u>
3.3	<u>Certificate of Correction of Certificate of Amendment to the Amended and Restated Certificate of Incorporation (previously filed as Exhibit 3.2 to the Registrant's Current Report on Form 8-K filed on April 30, 2021 and incorporated herein by reference).</u>
3.4	<u>Second Amended and Restated Bylaws (previously filed as Exhibit 3.3 to the Registrant's Current Report on Form 8-K filed on April 30, 2021 and incorporated herein by reference).</u>
4.1	<u>Form of Common Stock Certificate (previously filed as Exhibit 4.1 to the Registrant's Registration Statement on Form S-1/A (File No. 333-231381) filed on May 24, 2019 and incorporated herein by reference).</u>
4.2	<u>Amended and Restated Aterian, Inc. 2018 Equity Incentive Plan (previously filed as Exhibit 10.3 to Registrant's Registration Statement on Form S-8 filed on May 28, 2019 and incorporated herein by reference).</u>
4.3	<u>Form of Stock Option Agreement under the Mohawk Group Holdings, Inc. 2018 Equity Incentive Plan (previously filed as Exhibit 10.17 to the Registrant's Registration Statement on Form S-1 (File No. 333-231381) filed on May 10, 2019 and incorporated herein by reference).</u>
4.4	<u>Form of Restricted Stock Award Agreement under the Mohawk Group Holdings, Inc. 2018 Equity Incentive Plan (previously filed as Exhibit 10.4 to the Registrant's Registration Statement on Form S-8 filed on June 13, 2019 and incorporated herein by reference).</u>
5.1*	<u>Opinion of Paul Hastings LLP.</u>
23.1*	<u>Consent of Deloitte & Touche LLP, Independent Registered Public Accounting Firm.</u>
23.2*	<u>Consent of Paul Hastings LLP (included in Exhibit 5.1).</u>
24.1*	<u>Power of Attorney is contained on the signature page.</u>
107*	<u>Calculation of Filing Fee Table.</u>

* Filed herewith

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, 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 New York, State of New York, on March 28, 2022.

Aterian, Inc.

By: /s/ Yaniv Sarig

Name: Yaniv Sarig

Title: President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Yaniv Sarig, Arturo Rodriguez and Joseph A. Risico, and each or any one of them, as his or her true and lawful attorneys-in-fact and agent, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, 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 and necessary to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his substitutes or substitute, 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 and on the dates indicated.

<u>SIGNATURE</u>	<u>TITLE</u>	<u>DATE</u>
<u>/s/ Yaniv Sarig</u> Yaniv Sarig	President, Chief Executive Officer and Director (Principal Executive Officer)	March 28, 2022
<u>/s/ Arturo Rodriguez</u> Arturo Rodriguez	Chief Financial Officer (Principal Financial and Accounting Officer)	March 28, 2022
<u>/s/ Bari Harlam</u> Bari Harlam	Director	March 28, 2022
<u>/s/ William Kurtz</u> William Kurtz	Director	March 28, 2022
<u>/s/ Susan Lattmann</u> Susan Lattmann	Director	March 28, 2022
<u>/s/ Sarah Liebel</u> Sarah Liebel	Director	March 28, 2022
<u>/s/ Greg B. Petersen</u> Greg B. Petersen	Director	March 28, 2022
<u>/s/ Amy von Walter</u> Amy von Walter	Director	March 28, 2022



March 28, 2022

98082.00001

Aterian, Inc.
37 East 18th Street, 7th Floor
New York, NY 10003

Re: Registration Statement on Form S-8

Ladies and Gentlemen:

We have acted as counsel to Aterian, Inc., a Delaware corporation (the "**Company**"), in connection with the preparation of the registration statement on Form S-8 to be filed by the Company with the U.S. Securities and Exchange Commission (the "**Commission**") on or about the date hereof (the "**Registration Statement**") to effect registration under the Securities Act of 1933, as amended (the "**Securities Act**"), of an aggregate of 3,599,864 shares (the "**Shares**") of the Company's common stock, \$0.0001 par value per share ("**Common Stock**"), comprised of 3,599,864 shares of Common Stock issuable upon the vesting and exercise of awards to be granted by the Company pursuant to the Company's Amended and Restated 2018 Equity Incentive Plan (the "**Equity Plan**").

As such counsel and for purposes of our opinion set forth below, we have examined and relied upon originals or copies, certified or otherwise identified to our satisfaction, of such documents, resolutions, certificates and instruments of the Company and corporate records furnished to us by the Company, and have reviewed certificates of public officials, statutes, records and such other instruments and documents as we have deemed necessary or appropriate as a basis for the opinion set forth below, including, without limitation:

- (i) the Registration Statement;
- (ii) the Amended and Restated Certificate of Incorporation of the Company, as amended, as certified by the Office of the Secretary of State of the State of Delaware on March 25, 2022;
- (iii) the Second Amended and Restated Bylaws of the Company as presently in effect, as certified by an officer of the Company on March 25, 2022;
- (iv) the Equity Plan and the forms of award agreements related thereto that were attached as exhibits to the Registration Statement or otherwise incorporated by reference into the exhibits of the Registration Statement;
- (v) a certificate, dated as of March 25, 2022, from the Office of the Secretary of State of the State of Delaware, as to the existence and good standing of the Company in the State of Delaware (the "**Good Standing Certificate**"); and
- (vi) the resolutions adopted by the board of directors of the Company regarding the Equity Plan and other matters related thereto, as certified by an officer of the Company on March 28, 2022.

Paul Hastings LLP | 1117 S. California Avenue | Palo Alto, California 94304
t: +1.650.320.1800 | www.paulhastings.com

In addition to the foregoing, we have made such investigations of law as we have deemed necessary or appropriate as a basis for the opinion set forth in this opinion letter.

In such examination and in rendering the opinion expressed below, we have assumed, without independent investigation or verification: (i) the genuineness of all signatures on all agreements, instruments, corporate records, certificates and other documents submitted to us; (ii) the authenticity and completeness of all agreements, instruments, corporate records, certificates and other documents submitted to us as originals; (iii) that all agreements, instruments, corporate records, certificates and other documents submitted to us as certified, electronic, facsimile, conformed, photostatic or other copies conform to originals thereof, and that such originals are authentic and complete; (iv) the legal capacity and authority of all persons or entities (other than the Company) executing all agreements, instruments, corporate records, certificates and other documents submitted to us; (v) the due authorization, execution and delivery of all agreements, instruments, corporate records, certificates and other documents by all parties thereto (other than the Company); (vi) that no documents submitted to us have been amended or terminated orally or in writing except as has been disclosed to us in writing; (vii) that the statements contained in the certificates and comparable documents of public officials, officers and representatives of the Company and other persons on which we have relied for the purposes of this opinion letter are true and correct; (viii) that there has not been any change in the good standing status of the Company from that reported in the Good Standing Certificate; and (ix) that each of the officers and directors of the Company has properly exercised his or her fiduciary duties. As to all questions of fact material to this opinion letter, and as to the materiality of any fact or other matter referred to herein, we have relied (without independent investigation or verification) upon representations and certificates or comparable documents of officers and representatives of the Company. Our knowledge of the Company and its legal and other affairs is limited by the scope of our engagement, which scope includes the delivery of this opinion letter. We do not represent the Company with respect to all legal matters or issues. The Company may employ other independent counsel and, to our knowledge, handles certain legal matters and issues without the assistance of independent counsel. We have also assumed that the individual issuances, grants, awards or grants of purchase rights under the Equity Plan will be duly authorized by all necessary corporate action of the Company and duly issued, granted or awarded and exercised in accordance with the requirements of law, the Equity Plan and the agreements, forms of instrument, awards and grants duly adopted thereunder.

Based upon the foregoing, and in reliance thereon, and subject to the assumptions, limitations, qualifications and exceptions set forth herein, we are of the opinion that the Shares are duly authorized and, when issued and sold as described in the Registration Statement and in accordance with the Equity Plan and the applicable award agreements or forms of instrument evidencing purchase rights thereunder (including the receipt by the Company of the full consideration therefor), will be validly issued, fully paid and nonassessable.

Without limiting any of the other limitations, exceptions and qualifications stated elsewhere herein, we express no opinion with regard to the applicability or effect of the laws of any jurisdiction other than the General Corporation Law of the State of Delaware, as in effect on the date of this opinion letter.

This opinion letter deals only with the specified legal issues expressly addressed herein, and you should not infer any opinion that is not explicitly stated herein from any matter addressed in this opinion letter.

This opinion letter is rendered solely in connection with the issuance and delivery of the Shares as described in the Registration Statement and in accordance with the terms of the Equity Plan and the applicable award agreement or form of instrument evidencing purchase rights thereunder. This opinion letter is rendered as

Aterian, Inc.
March 28, 2022
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of the date hereof, and we assume no obligation to advise you or any other person with regard to any change after the date hereof in the circumstances or the law that may bear on the matters set forth herein after the effectiveness of the Registration Statement even if the change may affect the legal analysis or a legal conclusion or other matters in this opinion letter.

We hereby consent to the filing of this opinion letter as Exhibit 5.1 to the Registration Statement. In giving such consent, we do not hereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules or regulations of the Commission thereunder.

Very truly yours,

/s/ Paul Hastings 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 report dated March 16, 2022, relating to the financial statements of Aterian, Inc., appearing in the Annual Report on Form 10-K of Aterian, Inc. for the year ended December 31, 2021.

/s/ Deloitte & Touche LLP

New York, New York

March 28, 2022

Calculation of Filing Fee Table

S-8
(Form Type)

Aterian, 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	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Fees to Be Paid	Equity	Common Stock, par value \$0.0001 per share	457(h)	3,599,864 ⁽²⁾	\$2.475 ⁽³⁾	\$8,909,663.40 ⁽³⁾	0.0000927	\$825.93
	Total Offering Amounts					\$8,909,663.40	—	\$825.93
	Total Fees Previously Paid					—	—	—
	Total Fee Offsets					—	—	—
	Net Fee Due					—	—	\$825.93

- (1) Pursuant to Rule 416(a) of the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement shall also cover any additional shares of the Registrant’s Common Stock (“Common Stock”) that become issuable under the Amended and Restated Aterian, Inc. 2018 Equity Incentive Plan (the “2018 Plan”) by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without receipt of consideration that increases the number of the Registrant’s outstanding shares of Common Stock.
- (2) Represents 3,599,864 shares of Common Stock that were automatically added to the shares reserved for future issuance under the 2018 Plan. The 2018 Plan provides that the number of shares reserved for issuance under the 2018 Plan will automatically increase on January 1st each calendar year for ten years, starting on January 1, 2019 and ending on and including January 1, 2028, by the lesser of (a) such number of shares of Common Stock equal to 15% of the number of shares of Common Stock Deemed Outstanding (as defined in the 2018 Plan) on the immediately preceding December 31st, minus the number of shares of Common Stock in the Share Reserve (as defined in the 2018 Plan) as of immediately prior to the increase, and (b) a number determined by the Registrant’s board of directors.
- (3) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(c) and Rule 457(h) of the Securities Act. The proposed maximum offering price per share and the proposed maximum aggregate offering price with respect to the shares are calculated based on \$2.475 per share, the average of the high and low prices of the Common Stock, as reported on the Nasdaq Capital Market on March 21, 2022, a date within five business days prior to the filing of this Registration Statement.