

SUNPOWER CORP  
Form S-8  
December 15, 2005

As filed with the Securities and Exchange Commission on December 15, 2005

Registration No. \_\_\_\_\_

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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM S-8**  
**REGISTRATION STATEMENT**

*Under*

*THE SECURITIES ACT OF 1933*

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**SunPower Corporation**

(Exact name of registrant as specified in its charter)

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

**430 Indio Way**

**Sunnyvale, California**  
(Address of principal executive offices)

**94-3008969**  
(I.R.S. Employer  
Identification No.)

**94085**  
(Zip Code)

**SunPower Corporation 2005 Stock Incentive Plan,  
1996 Stock Plan, 1988 Incentive Stock Plan and**

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Options Granted to Certain Employees and Consultants

(Full title of the plans)

<p><b>Thomas H. Werner</b>   <b>Chief Executive Officer</b>   <b>SunPower Corporation</b>   <b>430 Indio Way</b>   <b>Sunnyvale, California 94085</b>   <b>(408) 991-0900</b>  (Name, address and telephone   number of agent for service)</p>	<p><i>Copy to:</i>   <b>Stephen M. Wurzburg, Esq.</b>   <b>Pillsbury Winthrop Shaw Pittman LLP</b>   <b>2475 Hanover Street</b>   <b>Palo Alto, CA 94304</b>   <b>(650) 233-4500</b></p>
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CALCULATION OF REGISTRATION FEE

Title of Securities  To Be Registered <sup>(1)</sup>	Amount To  Be Registered <sup>(2)</sup>	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount of  Registration Fee
Class A Common Stock, par value \$0.001 per share: To be issued under the SunPower Corporation 2005 Stock Incentive Plan	124,427(6)	\$26.11(3)	\$3,248,789	\$348
Outstanding options to purchase shares of Class A Common Stock, par value \$0.001 per share	6,661,893(4)(5)(6)	\$26.11(3)	\$173,942,027	\$18,612
Outstanding options granted to certain employees and consultants to purchase shares of Class A Common Stock, par value \$0.001 per share	105,000(5)(6)	\$26.11(3)	\$2,741,550	\$294
Total Registration Fee	N/A	N/A	N/A	\$19,254

- (1) The securities to be registered include options and rights to acquire Class A Common Stock.
- (2) Pursuant to Rule 416, this registration statement also covers any additional securities that may be offered or issued in connection with any stock split, stock dividend, recapitalization or any other similar transaction effected without receipt of consideration, which results in an increase in the number of the Registrant's outstanding shares of Class A Common Stock.
- (3) Offering prices of shares and options to purchase shares that have not yet been granted as of the date of this Registration Statement are estimated pursuant to Rules 457(h) and 457(c) under the Securities Act of 1933, as amended (the Securities Act), solely for the purposes of calculating the registration fee, based on the average of the high and low prices of the Class A Common Stock as reported on the Nasdaq National Market on December 8, 2005.
- (4) Represents shares subject to outstanding options granted under the 1996 Stock Plan and 1988 Incentive Stock Plan.
- (5) Options that expire, terminate or are cancelled prior to exercise will be made available for issuance under the 2005 Stock Incentive Plan.
- (6) As of November 30, 2005. Subsequent to November 30, 2005, the total number of shares to be registered (6,891,320) has not changed although the breakdown between the amount to be registered in each of the three rows in column 1 of the table may have changed.

The Registration Statement shall become effective upon filing in accordance with Rule 462 under the Securities Act.

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**PART I**

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

**Item 1. Plan Information.\***

**Item 2. Registrant Information and Employee Program Annual Information.\***

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\* Information required by Part I to be contained in the Section 10(a) prospectus is omitted from this Registration Statement in accordance with Rule 428 under the Securities Act of 1933, as amended (the Securities Act ) and the Note to Part I of Form S-8.

**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

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

The following documents filed by the Registrant with the Securities and Exchange Commission are hereby incorporated by reference in this Registration Statement:

(a) Registrant's prospectus dated and filed on November 17, 2005 pursuant to Rule 424(b)(4) of the Securities Act (relating to the Registration Statement on Form S-1 filed on August 25, 2005 (File No. 333-127854)(the IPO S-1 Registration Statement )), which contains audited financial statements for the Registrant's latest fiscal year for which such statements have been filed.

(b) None.

(c) The description of Registrant's capital stock contained in Registrant's registration statement on Form 8-A, filed on October 31, 2005 pursuant to Section 12(g) of the Securities Exchange Act of 1934, as amended (the Exchange Act ), including any amendment or report filed for the purpose of updating such description.

In addition, all documents subsequently filed by Registrant 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 offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this registration statement and to be a part hereof from the date of filing of such documents.

**Item 4. Description of Securities.**

Not applicable.

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

The validity of the shares of Class A common stock offered hereby has been passed upon for the Registrant by Pillsbury Winthrop Shaw Pittman LLP, Palo Alto, California.

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

Section 145 of the Delaware General Corporation Law authorizes a court to award or a corporation's board of directors to grant indemnification to directors and officers in terms sufficiently broad to permit such indemnification under certain circumstances for liabilities (including reimbursement for expenses incurred) arising under the Securities Act of 1933. The Registrant's Restated Certificate of Incorporation (Exhibit 3.(i)2 to Amendment No. 6 to the IPO S-1 Registration Statement filed on November 15, 2005) and the Registrant's Bylaws (Exhibit 3.(ii)2 to Amendment No. 1 to the IPO S-1 Registration Statement filed on October 11, 2005) provide for indemnification of the Registrant's directors, officers, employees and other agents to the extent and under the circumstances permitted by the Delaware General Corporation Law.

The Registrant has entered into Indemnification Agreements (Exhibit 10.1 to the IPO S-1 Registration Statement) with its officers and directors that will require the Registrant to, among other things, indemnify them against certain liabilities that may arise by reason of their status or service as directors or officers to the fullest extent not prohibited by law.

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

Not applicable.

**Item 8. Exhibits.**

<u>Exhibit No.</u>	<u>Description</u>
5.1	Opinion of Pillsbury Winthrop Shaw Pittman LLP.
23.1	Consent of Independent Registered Public Accounting Firm.
23.2	Consent of Pillsbury Winthrop Shaw Pittman LLP (included in Exhibit 5.1).
24.1	Power of Attorney (see page 4).
99.1	SunPower Corporation 2005 Stock Incentive Plan.
99.2**	1996 Stock Plan.
99.3***	1988 Incentive Stock Plan.

\*\* Incorporated by reference to Exhibit 10.2 to the IPO S-1 Registration Statement.

\*\*\* Incorporated by reference to Exhibit 10.3 to the IPO S-1 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 hereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement; and

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(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 information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed 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 Section 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 the 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 foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange 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.



/s/ PATRICK WOOD

Director

December 9, 2005

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Patrick Wood

**INDEX TO EXHIBITS**

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