

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

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

Zymergen Inc.

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)
5980 Horton Street, Suite 105
Emeryville, California
(Address of Principal Executive Offices)

46-2942439
(I.R.S. Employer
Identification Number)

94608
(Zip Code)

Zymergen Inc. 2021 Incentive Award Plan
Zymergen Inc. Employee Stock Purchase Plan
(Full Title of the Plan)

Jay Flatley
Acting Chief Executive Officer
5980 Horton Street, Suite 105
Emeryville, California 94608
(415) 801-8073
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:
Sarah K. Solum
Pamela L. Marcogliese
Freshfields Bruckhaus Deringer US LLP
2710 Sand Hill Road
Menlo Park, California 94025
Telephone: (650) 618-9250

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

**REGISTRATION OF ADDITIONAL SHARES
PURSUANT TO GENERAL INSTRUCTION**

Pursuant to General Instruction E of Form S-8, Zymergen Inc. (the “Registrant”) is filing this Registration Statement on Form S-8 (this “Registration Statement”) with the U.S. Securities and Exchange Commission (the “SEC”) to register (i) 5,152,264 additional shares of the Registrant’s common stock, par value \$0.001 per share (the “Common Stock”) for issuance under the Registrant’s 2021 Incentive Award Plan (the “2021 Plan”), pursuant to the provisions of the 2021 Plan that provide for an automatic annual increase in the number of shares of Common Stock reserved for issuance under the 2021 Plan, and (ii) 1,030,452 additional shares of Common Stock for issuance under the Registrant’s Employee Stock Purchase Plan (the “ESPP”), pursuant to the provisions of the ESPP that provide for an automatic annual increase in the number of shares reserved for issuance under the ESPP.

These additional shares of Common Stock are securities of the same class as other securities for which a Registration Statement on Form S-8 (File No. 333-255450) (the “Prior Registration Statement”) was filed with the SEC on April 23, 2021. In accordance with General Instruction E of Form S-8, the contents of the Prior Registration Statement are incorporated herein by reference and made a part of this Registration Statement. In accordance with the instructional note to Part I of Form S-8 as promulgated by the SEC, the information specified by Part I of Form S-8 has been omitted from this Registration Statement.

**PART II
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

In this Registration Statement, Zymergen Inc. is sometimes referred to as “Registrant,” “we,” “us” or “our.”

Item 3. Incorporation of Documents by Reference.

The SEC allows us to incorporate by reference the information we file with them, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be part of this registration statement, and later information filed with the SEC will update and supersede this information. The following documents filed by the Registrant with the SEC are incorporated as of their respective dates in this registration statement by reference:

- The prospectus filed by the Registrant with the SEC pursuant to Rule 424(b) under the Securities Act, on April 22, 2021, relating to the registration statement on Form S-1, as amended (File No. 333-254612), which contains the Registrant’s audited financial statements for the latest fiscal year for which such statements have been filed;
- The Registrant’s Annual Report on Form 10-K for the year ended December 31, 2021 filed with the SEC on March 30, 2022 (File No. 001-40354); and
- The description of the Registrant’s common stock contained in the Registrant’s registration statement on Form 8-A (File No. 001-40354), filed by the Registrant with the SEC under Section 12(b) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), on April 19, 2021, including any amendments or reports filed for the purpose of updating such description.

In addition, all documents that the Registrant subsequently files pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act prior to the filing of a post-effective amendment to the registration statement which indicates that all of the shares of common stock offered have been sold or which deregisters all of such shares 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 the filing of such documents, except as to any portion of any future annual or quarterly report to stockholders or document or current report furnished under current Items 2.02 or 7.01 of Form 8-K, and exhibits furnished on such form that relate to such items, 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 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 superseded, to constitute a part of this registration statement.

Under no circumstances will any information filed under current Items 2.02 or 7.01 of Form 8-K, and exhibits furnished on such form that relate to such items, be deemed incorporated herein by reference unless such Form 8-K expressly provides to the contrary.

Item 5. Interests of Named Experts and Counsel.

None.

Item 8. Exhibits.

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	Date	Number	
4.1	Amended and Restated Certificate of Incorporation of Zymergen Inc., as currently in effect.	8-K	April 26, 2021	3.1	
4.2	Amended and Restated Bylaws of the Registrant, as currently in effect.	8-K	April 26, 2021	3.2	
4.3	Form of Stock Certificate for common stock of the Registrant	S-1	March 26, 2021	4.2	
5.1	Opinion of Freshfields Bruckhaus Deringer US LLP.				X
23.1	Consent of Independent Registered Public Accounting Firm.				X
23.2	Consent of Freshfields Bruckhaus Deringer US LLP (included in Exhibit 5.1).				X
24.1	Power of Attorney. Reference is made to the signature page to this registration statement.				X
99.1	2021 Incentive Award Plan.	S-8	April 23, 2021	99.2	
99.2	Employee Stock Purchase Plan.	S-8	April 23, 2021	99.3	
107	Filing Fee Table				X

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 Emeryville, State of California, on this 29th day of March, 2022.

Zymergen Inc.

By: /s/ Jay Flatley

Name: Jay Flatley

Title: Chairman and Acting Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below does hereby constitute and appoint Jay Flatley and Enakshi Singh, and each of them, with full power of substitution and full power to act without the other, as his or her true and lawful attorney-in-fact and agent to act for him or her 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 this registration statement, with all exhibits thereto, and other documents in connection therewith, with the SEC, 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 order to effectuate the same as fully, to all intents and purposes, as they or 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, may lawfully 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 date indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Jay Flatley</u> Jay Flatley	Chairman and Acting Chief Executive Officer (Principal Executive Officer)	March 29, 2022
<u>/s/ Enakshi Singh</u> Enakshi Singh	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	March 29, 2022
<u>/s/ Sandra E. Peterson</u> Sandra E. Peterson	Lead Independent Director	March 29, 2022
<u>/s/ Steven Chu</u> Steven Chu	Director	March 29, 2022
<u>/s/ Christine M. Gorjanc</u> Christine M. Gorjanc	Director	March 30, 2022
<u>/s/ Travis Murdoch</u> Travis Murdoch	Director	March 29, 2022
<u>/s/ Matthew A. Ocko</u> Matthew A. Ocko	Director	March 30, 2022
<u>/s/ Zach Serber</u> Zach Serber	Director	March 29, 2022
<u>/s/ Rohit Sharma</u> Rohit Sharma	Director	March 30, 2022

Calculation of Filing Fee Tables

Form S-8 (Form Type)

Zymergen Inc.
(Exact name of Registrant as Specified in its Charter)

Type 1—Newly Registered Securities

Security Type	Security Class Title	Fee Calculation Rule	Amount Registered ⁽¹⁾	Proposed Maximum Offering Price per Unit ⁽²⁾	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Equity	Common Stock, \$0.001 par value per share, reserved for issuance pursuant to the Zymergen Inc. 2021 Incentive Award Plan	457(c) and 457(h)	5,152,264 ⁽³⁾	\$3.47	\$17,878,356.08	0.0000927	\$1,657.32
Equity	Common Stock, \$0.001 par value per share, reserved for issuance pursuant to the Zymergen Inc. Employee Stock Purchase Plan	457(c) and 457(h)	1,030,452 ⁽⁴⁾	\$3.47	\$3,575,668.44	0.0000927	\$331.46
Total Offering Amounts					\$21,454,024.52	0.0000927	\$1,988.79
Total Fee Offsets⁽⁵⁾							—
Net Fee Due							\$1,988.79

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement shall also cover any additional shares of Registrant’s common stock that become issuable under the plans set forth herein as a result of any stock dividend, stock split, recapitalization, or other similar transaction effected without the receipt of consideration that results in an increase to the number of outstanding shares of Registrant’s common stock, as applicable.
- (2) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(c) and (h) under the Securities Act and based upon the average of the high and low prices of the Registrant’s common stock as reported on The Nasdaq Global Select Market on March 22, 2022.
- (3) Represents shares of common stock that were automatically added to the shares reserved for issuance under the Zymergen Inc. 2021 Incentive Award Plan (the “2021 Plan”) on January 1, 2022 pursuant to an “evergreen” provision contained in the 2021 Plan.
- (4) Represents shares of common stock that were automatically added to the shares reserved for issuance under the Zymergen Inc. Employee Stock Purchase Plan (the “ESPP”) on January 1, 2022 pursuant to an “evergreen” provision contained in the ESPP.
- (5) The Registrant does not have any fee offsets.



Zymergen Inc.
5980 Horton Street, Suite 105
Emeryville, CA 94608

March 29, 2022

Ladies and Gentlemen:

Zymergen Inc., a Delaware corporation (the “**Company**”), has filed with the Securities and Exchange Commission a Registration Statement on Form S-8 (the “**Registration Statement**”) for the purpose of registering under the Securities Act of 1933, as amended (the “**Securities Act**”), 6,182,716 shares of its common stock, par value \$0.001 per share (the “**Securities**”), to be issued under the Company’s 2021 Incentive Award Plan, as amended (the “**2021 Plan**”) and the Zymergen, Inc. Employee Stock Purchase Plan (the “**ESPP**”), as amended (together, the “**Plans**”).

We, as your counsel, have examined originals or copies of such documents, corporate records, certificates of public officials and other instruments as we have deemed necessary or advisable for the purpose of rendering this opinion.

In rendering the opinion expressed herein, we have, without independent inquiry or investigation, assumed that (i) all documents submitted to us as originals are authentic and complete, (ii) all documents submitted to us as copies conform to authentic, complete originals, (iii) all signatures on all documents that we reviewed are genuine, (iv) all natural persons executing documents had and have the legal capacity to do so, (v) all statements in certificates of public officials and officers of the Company that we reviewed were and are accurate and (vi) all representations made by the Company as to matters of fact in the documents that we reviewed were and are accurate.

Based upon the foregoing, and subject to the additional assumptions and qualifications set forth below, we advise you that, in our opinion, as of the date hereof, the Securities have been duly authorized and, when and to the extent issued, delivered and paid for in accordance with the 2021 Plan or ESPP, as applicable, the Securities will be validly issued, fully paid and non-assessable.

We are members of the Bars of the States of New York and California, and the foregoing opinion is limited to the General Corporation Law of the State of Delaware. 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 is rendered solely in connection with the issuance and delivery of the Securities as described in the Registration Statement and in accordance with the terms of the Plans and the applicable award agreement or form of instrument evidencing purchase rights thereunder. This opinion letter is rendered as 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 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 as an exhibit to the Registration Statement. In giving this consent, we do not admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act.

Very truly yours,

/s/ Freshfields Bruckhaus Deringer US LLP

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the 2021 Incentive Award Plan and Employee Stock Purchase Plan of Zymergen Inc. of our report dated March 29, 2022, with respect to the consolidated financial statements of Zymergen Inc. in its Annual Report (Form 10-K) for the year ended December 31, 2021, filed with the Securities and Exchange Commission.

/S/ Ernst & Young LLP

Redwood City, California

March 29, 2022