

THORATEC CORP
Form S-8 POS
July 01, 2002

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As filed with the Securities and Exchange Commission on July 1, 2002

Registration No. 333-90768

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

Post-Effective

Amendment No. 1 to

FORM S-8

REGISTRATION STATEMENT UNDER
THE SECURITIES ACT OF 1933

THORATEC CORPORATION

(Exact name of registrant as specified in its charter)

California
(State or other jurisdiction of incorporation or
organization)

94-2340464
(I.R.S. employer identification No.)

6035 Stoneridge Drive, Pleasanton, California 94588
(Address of principal executive offices)

EMPLOYEE STOCK PURCHASE PLAN
(Full title of the Plan)

D. Keith Grossman
Thoratec Corporation
6035 Stoneridge Drive
Pleasanton, California 94588
(Name and address of agent for service)
(925) 847-8600
(Telephone number, including area code, of agent for service)

Copy to:
Kyle Guse
Heller Ehrman White & McAuliffe LLP
275 Middlefield Road
Menlo Park, California 94025-3506
(650) 324-7000

CALCULATION OF REGISTRATION FEE

Proposed
maximum

Proposed maximum

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| Title of securities to be registered | Amount to be registered(1) | offering price per share(2) | aggregate offering price | Amount of registration fee |
|--------------------------------------|----------------------------|-----------------------------|--------------------------|----------------------------|
| Common Stock, no par value | 500,000 | \$ ---- | \$---- | \$---- |

(1) Pursuant to Rule 416(a), this registration statement also covers any additional securities that may be offered or issued in connection with any stock split, stock dividend or similar transaction.

(2) Estimated solely for the purpose of computing the amount of the registration fee pursuant to Rule 457(c) under the Securities Act of 1933, as amended, and based on the average of the high and low prices reported on the NASDAQ Stock Market on June 14, 2002.

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PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE

The following documents filed or to be filed with the Securities and Exchange Commission by Thoratec Corporation (Thoratec) are incorporated by reference in this registration statement:

- (a) Thoratec s Annual Report on Form 10-K for the fiscal year ended December 29, 2001;
- (b) Thoratec s Quarterly Report on Form 10-Q for the quarter ended March 30, 2002;
- (c) The description of Thoratec s common stock contained in Thoratec s registration statement on Form 8-A, filed May 18, 1981, under the Securities Exchange Act of 1934, as amended (Exchange Act), including any amendment or reports filed for the purpose of updating that description; and
- (d) The description of Thoratec s Rights Agreement and Preferred Stock Purchase Rights contained in Thoratec s registration statement on Form 8-A, filed May 3, 2002, under the Exchange Act, including any amendment or reports filed for the purpose of updating that description.

All documents subsequently filed by Thoratec 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 hereby 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 part thereof from the date of filing of such documents.

ITEM 4. DESCRIPTION OF SECURITIES

Not applicable.

ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL

Not applicable.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS

Pursuant to Section 204(a) and 317 of the California Corporations Code, Thoratec has included in its articles of incorporation and by-laws provisions regarding the indemnification of officers and directors of Thoratec. Article Fourth of Thoratec s Amended and Restated Articles of Incorporation, as amended, provides as follows:

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Fourth: The liability of the directors of this corporation for monetary damages shall be eliminated to the fullest extent permissible under California law. This corporation is also authorized, to the fullest extent permissible under California law, to indemnify its agents (as defined in Section 317 of the California Corporations Code), whether by-law, agreement or otherwise, in excess of the indemnification expressly permitted by Section 317 and to advance defense expenses to its agents in connection with such matters as they are incurred. If, after the effective date of this Article, California law is amended in a manner which permits a corporation to limit the monetary or other liability of its directors or to authorize indemnification of, or advancement of such defense expense to, its directors or other persons, in any such case to a greater extent than is permitted on such effective date, the references in this Article to California law shall to that extent be deemed to refer to California law as so amended.

Section 29 of Thoratec's by-laws, as amended, provides as follows:

29. Indemnification of Directors and Officers.

(a) Indemnification. To the fullest extent permissible under California law, the corporation shall indemnify its directors and officers against all expenses, judgment, fines settlement and other amounts actually and reasonably incurred by them in connection with any proceeding, including an action by or in the right of the corporation, by reason of the fact that such person is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director, officer, trustee, employee or agent of another corporation, or of a partnership, joint venture, trust or other enterprise (including service with respect to employee benefit plans). To the fullest extent permissible under California law, expenses incurred by a director or officer seeking indemnification under this By-law in defending any proceeding shall be advanced by the corporation as they are incurred upon receipt by the corporation of an undertaking by or on behalf of the director or officer to repay such amount if it shall ultimately be determined that the director or officer is not entitled to be indemnified by the corporation for those expenses. If, after the effective date of this By-law, California law is amended in a manner which permits the corporation to authorize indemnification of or advancement of expense to its directors or officers, in any such case to a greater extent than is permitted on such effective date, the references in this By-law to California law shall to that extent be deemed to refer to California law as so amended. The rights granted by this By-law are contractual in nature and, as such, may not be altered with respect to any present or former director or officer without the written consent of that person.

(b) Procedure. Upon written request to the Board of Directors by a person seeking indemnification under this By-law, the Board shall promptly determine in accordance with Section 317(e) of the California Corporations Code whether the applicable standard of conduct has been met and, if so, the Board shall authorize indemnification. If the Board cannot authorize indemnification because the number of directors who are parties to the proceeding with respect to which indemnification is sought prevents the formation of a quorum of directors who are not parties to the proceeding, then, upon written request by the person seeking indemnification, independent legal counsel (by means of a written opinion obtained at the corporation's expense) or the corporation's shareholders shall determine whether the applicable standard of conduct has been met and, if so, shall authorize indemnification.

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(c) Definitions. The term "proceeding" means any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative. The term "expenses" includes, without limitation, attorney's fees and any expenses of establishing a right to indemnification.

Thoratec has also entered into agreements with certain of its officers and directors to indemnify such persons within the limits set forth by California law and Thoratec's by-laws, as amended and its Articles of Incorporation, as amended.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED

Not applicable.

ITEM 8. EXHIBITS

| | |
|---------------|--|
| 5.1 | Opinion of Heller Ehrman White & McAuliffe LLP |
| 23.1 | |
| Independent | |
| Auditors | |
| Consent | |
| (1)23.2 | |
| Consent of | |
| Heller | |
| Ehrman | |
| White & | |
| McAuliffe | |
| LLP (filed as | |
| part of | |
| Exhibit 5)24 | |
| Power of | |
| Attorney | |
| (see page | |
| II-5)99.1 | |
| Employee | |
| Stock | |
| Purchase | |
| Plan | |

(1) After reasonable effort, Thoratec was unable to obtain the consent of Arthur Andersen LLP for the incorporation by reference of its report dated March 13, 2002, included in Thoratec's Annual Report on Form 10-K for the year ended December 29, 2001, as filed on March 15, 2002. Thoratec has dispensed with the requirement to file Arthur Andersen LLP's consent in reliance on Rule 437(a) promulgated under the Securities Act. Because Arthur Andersen LLP has not consented to the incorporation by reference of their report in this registration statement, you will not be able to recover against Arthur Andersen LLP under Section 11 of the Securities Act for any untrue statements of a material fact contained in the financial statements audited by Arthur Andersen LLP incorporated by reference herein or any omissions to state a material fact required to be stated therein.

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 of 1933, as amended (the "Securities Act");

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(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 the registration statement;

(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;

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provided, however, that paragraphs A(1)(i) and A(1)(ii) shall 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 15(d) of the Exchange Act that are incorporated by reference in the 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 upon the termination of the Employee Stock Purchase Plan.

B. The undersigned registrant hereby undertakes that, for purposes of determining 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 that is incorporated by reference into 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, 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.

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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 Post-Effective Amendment No. 1 to 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 Pleasanton, State of California, on this 1st day of July, 2002.

THORATEC CORPORATION

By /s/ M. Wayne Boylston

M. Wayne Boylston,
Chief Financial Officer, Senior
Vice President and Secretary
(Principal Financial and
Accounting Officer)

POWER OF ATTORNEY TO SIGN AMENDMENTS

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below does hereby constitute and appoint D. Keith Grossman and M. Wayne Boylston, and each of them, with full power of substitution and full power to act without the other, as such person's true and lawful attorney-in-fact and agent for such person in such person's name, place and stead, in any and all capacities, to sign any or all amendments (including post-effective amendments) to this amended registration statement on Form S-8 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 and about the premises in order to effectuate the same as fully, to all intents and purposes, as they or such person 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 of 1933, this amended registration statement on Form S-8 has been signed by the following persons in the capacities and on the dates indicated.

/s/ D. Keith Grossman*

Director, Chief Executive Officer and
President

July 1, 2002

D. Keith Grossman

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| | | |
|---|---|--------------|
| <u>/s/ M. Wayne Boylston</u> M. Wayne Boylston | Chief Financial Officer, Senior Vice President and Secretary (Principal Financial and Accounting Officer) | July 1, 2002 |
| <u>/s/ J. Donald Hill*</u> J. Donald Hill | Director and Chairman of the Board of Directors | July 1, 2002 |
| <u>/s/ Howard E. Chase*</u> Howard E. Chase | Director | July 1, 2002 |
| <u>/s/ J. Daniel Cole*</u> J. Daniel Cole | Director | July 1, 2002 |
| <u>/s/ William M. Hitchcock*</u> William M. Hitchcock | Director | July 1, 2002 |
| <u>/s/ George W. Holbrook, Jr.*</u> George W. Holbrook, Jr. | Director | July 1, 2002 |
| <u>/s/ Theo Melas-Kyriazi*</u> Theo Melas-Kyriazi | Director | July 1, 2002 |
| <u>/s/ Daniel M. Mulvena*</u> Daniel M. Mulvena | Director | July 1, 2002 |
| <u>/s/ M. Wayne Boylston</u> M. Wayne Boylston *Power of Attorney | | July 1, 2002 |

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Index to Exhibits

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| 5.1 | Opinion of Heller Ehrman White & McAuliffe LLP23.1 |
| Independent Auditors | Consent23.2 |
| Consent of Heller Ehrman White & McAuliffe LLP (see Exhibit 5)24 | Power of Attorney (see page II-5)99.1 |
| Employee Stock Purchase Plan | |