

SECURITIES AND EXCHANGE COMMISSION

FORM S-8

Initial registration statement for securities to be offered to employees pursuant to employee benefit plans

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FILER

ONTRACK DATA INTERNATIONAL INC

CIK: **1022703** | IRS No.: **411521650** | State of Incorporation: **MN** | Fiscal Year End: **1231**
Type: **S-8** | Act: **33** | File No.: **333-18969** | Film No.: **96687928**
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Mailing Address
6312 BURY DRIVE
EDEN PRAIRIE MN 55346

Business Address
6321 BURY DR
EDEN PRAIRIE MN 55346
6129371107

As filed with the Securities and Exchange Commission on December 30, 1996.
Registration No. 333-_____

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM S-8
Registration Statement
Under The
Securities Act of 1933

ONTRACK DATA INTERNATIONAL, INC.
(Exact name of registrant as specified in its charter)

MINNESOTA
(State or other jurisdiction
of incorporation
or organization)

41-1521650
(I.R.S. Employer
Identification No.)

6321 BURY DRIVE
EDEN PRAIRIE, MINNESOTA 55346
(Address of Principal Executive Offices and zip code)

ONTRACK DATA INTERNATIONAL, INC.
1996 STOCK INCENTIVE PLAN,
NON-QUALIFIED STOCK OPTION PLAN
AND
EMPLOYEE STOCK PURCHASE PLAN
(Full title of the Plans)

John M. Bujan
ONTRACK Data International, Inc.
6321 Bury Drive
Eden Prairie, Minnesota 55346
(612) 937-1107

Copy to:

Martin R. Rosenbaum
Lindquist & Vennum P.L.L.P.

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
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Common Stock, \$.01 par value	1,544,076 shares (1)	\$13.875 (2)	\$21,424,054 (2)	\$6,492.14
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- (1) Consists of (i) 1,000,000 shares to be issued under the 1996 Stock Incentive Plan, (ii) 294,076 shares to be issued under the Non-Qualified Stock Option Plan and (iii) 250,000 shares to be issued under the Employee Stock Purchase Plan.
- (2) Estimated solely for the purpose of determining the registration fee pursuant to Rule 457(c) and (h) and based upon the average of the high and low prices of the Company's Common Stock on the Nasdaq National Market on December 20, 1996.

PART I

Pursuant to Part I of Form S-8, the information required by Items 1 and 2 of Form S-8 is not filed as a part of this Registration Statement.

PART II

ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE.

The following documents filed with the Securities and Exchange Commission are hereby incorporated by reference:

- (a) The Prospectus of the Company dated October 21, 1996 filed pursuant to Rule 424(b) on October 23, 1996.
- (b) The Quarterly Report of the Company on Form 10-Q for the quarter ended September 30, 1996.
- (c) The description of the Company's Common Stock as set forth under Item 1 to the Company's Form 8-A Registration Statement filed on September 17, 1996, which incorporated the material set forth under DESCRIPTION OF CAPITAL STOCK in the Company's Registration Statement on Form SB-2 filed with the Commission on August 21, 1996 (Registration No. 333-05470C), including any 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 prior to the completion or termination of this offering of shares of Common Stock 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.

Not applicable.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

Section 5.1 of the Company's Bylaws provides as follows:

No director shall be personally liable to the corporation or to its shareholders for monetary damages for any breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the laws of the State of Minnesota as the same may exist or may hereafter be amended. Any repeal or modification of the provisions of this Article shall not adversely affect any right or protection of a director of the corporation existing at the time of such repeal or modification.

Any person who at any time shall serve or shall have served as a director, officer, or employee of the corporation, or of any other enterprise at the request of the corporation, and the heirs, executors and administrators of such person shall be indemnified by the corporation in accordance with, and to the fullest extent permitted by, the provisions of the Minnesota Business Corporation Act, as it may be amended from time to time.

Section 302A.521 of the Minnesota Business Corporation Act provides that a corporation shall indemnify any person made or threatened to be made a party to a proceeding by reason of acts or omissions performed in their official capacity as an officer, director, employee or agent of the corporation against judgments, penalties, fines, including without limitation, excise taxes assessed against such person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorneys' fees and disbursements, incurred by such person in connection with the proceeding if, with respect to the acts or omissions of such person complained of in the proceeding, such person (i) has not been indemnified by another organization or employee benefit plan for the same expenses with respect to the same acts or omissions; (ii) acted in good faith; (iii) received no improper personal benefit and Minnesota Statutes, Section 302A.255 (regarding conflicts of interest), if applicable, has been satisfied; (iv) in the case of a criminal proceeding, has no reasonable cause to believe the conduct was unlawful; and (v) in the case of acts or omissions by persons in their official capacity for the corporation, reasonably believed that the conduct was in the best interests of the corporation, or in the case of acts or omissions by persons in their capacity for other organization, reasonably believed that the conduct was not opposed to the best interests of the corporation. In addition, Section 302A.521, subd. 3, of the Minnesota Statutes requires payment or reimbursement by the corporation, upon written request, of reasonable expenses (including attorneys' fees) incurred by a person in advance of the final disposition of a proceeding in certain instances if a decision as to required indemnification is made by a disinterested majority of the Board of Directors present at a meeting at which a disinterested quorum is present, or by a designated committee of the Board, by special legal counsel, by the shareholders or by a court.

In addition, the Company has entered into indemnification agreements with each of its directors and officers, which agreements provide for indemnification to the full extent permitted by Minnesota law.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED.

The options that have been granted under the Plans were all granted to employees, directors and consultants of the Company and were exempt from registration pursuant to Section 4(2) of the Securities Act of 1933.

ITEM 8. EXHIBITS.

EXHIBIT

- 4.1 1996 Stock Incentive Plan (incorporated by reference to Exhibit 10.1 of the Company's Registration Statement on Form S-B2 as it became effective on October 21, 1996 Registration No. 333-05470C (the "Form SB-2")).

- 4.2 Employee Stock Purchase Plan (incorporated by reference to Exhibit 10.2 of the Form SB-2).
- 4.3 Non-Qualified Stock Option Plan (incorporated by reference to Exhibit 10.3 of the Form SB-2)
- 5.1 Opinion of Lindquist & Vennum P.L.L.P
- 23.1 Consent of Lindquist & Vennum P.L.L.P. (included in Exhibit 5.1)

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23.2 Consent of Price Waterhouse LLP

24.1 Power of Attorney (included on signature page)

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;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement, (or the most recent post-effective amendment thereof) which, individually or in aggregate, represents a fundamental change in information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

Provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the registration statement is on Form S-3, Form S-8 or Form F-3 and 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 Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, 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 of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) 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.

(h) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers, and controlling persons of the registrant pursuant to the foregoing provisions, or

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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 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 connected 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 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, 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 Eden Prairie, State of Minnesota, on December 30, 1996.

ONTRACK DATA INTERNATIONAL, INC.

By /s/ Michael W. Rogers

Michael W. Rogers
Chairman and Chief Executive Officer

POWER OF ATTORNEY

The undersigned officers and directors of ONTRACK Data International, Inc. hereby constitute and appoint Michael W. Rogers and Thomas P. Skiba, or either of them, with power to act one without the other, our true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for us and in our stead, in any and all capacities to sign any and all amendments (including post-effective amendments) to this Registration Statement and all documents relating thereto, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent, full power and authority to do and perform each and every act and thing necessary or advisable to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his or her substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this registration statement has been signed below by the following persons on December 30, 1996 in the capacities indicated.

SIGNATURE

/s/ Michael W. Rogers

Michael W. Rogers, Chairman and
Chief Executive Officer (Principal
Executive Officer) and Director

/s/ Thomas P. Skiba

Thomas P. Skiba,
Vice President and Chief

Financial Officer (Principal Financial
and Accounting Officer)

/s/ John E. Pence

John E. Pence, President and Director

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/s/ Gary S. Stevens

Gary S. Stevens, Director

/s/ Roger D. Shober

Roger D. Shober, Director

/s/ Robert M. White

Robert M. White, Ph.D., Director

/s/ Jacqueline C. Morby

Jacqueline C. Morby, Director

/s/ Richard J. Runbeck

Richard J. Runbeck, Director

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December 30, 1996

ONTRACK Data International, Inc.
6321 Bury Drive
Eden Prairie, MN 55346

RE: OPINION OF COUNSEL AS TO LEGALITY OF 1,544,076 SHARES OF
COMMON STOCK TO BE REGISTERED UNDER THE SECURITIES ACT OF 1933

Ladies and Gentlemen:

This opinion is furnished in connection with the registration under the Securities Act of 1933 on Form S-8 of 1,544,076 shares of Common Stock, \$.01 par value per share, of ONTRACK Data International, Inc. (the "Company") offered to key employees, directors and consultants pursuant to the ONTRACK Data International, Inc. 1996 Stock Incentive Plan, Nonqualified Stock Option Plan and Employee Stock Purchase Plan (the "Plans").

As general counsel for the Company, we advise you that it is our opinion, based on our familiarity with the affairs of the Company and upon our examination of pertinent documents, that the 1,544,076 shares of Common Stock to be offered to employees, directors and consultants by the Company under the Plans will, when paid for and issued, be validly issued and lawfully outstanding, fully paid and nonassessable shares of Common Stock of the Company.

The undersigned hereby consent to the filing of this opinion with the Securities and Exchange Commission as an Exhibit to the Registration Statement with respect to said shares of Common Stock under the Securities Act of 1933.

Very truly yours,

LINDQUIST & VENNUM P.L.L.P.

CONSENT OF INDEPENDENT ACCOUNTANTS

We hereby consent to the incorporation by reference in the Registration Statement on Form S-8 for the ONTRACK Data International, Inc. 1996 Stock Incentive Plan, Non-Qualified Stock Option Plan and Employee Stock Purchase Plan of our report dated March 8, 1996, except as to Note 13, which is as of October 1, 1996, which appears on page F-2 of the Prospectus dated October 21, 1996 which was filed as part of the Registration Statement (No. 333-05470C) on Form SB-2, for the two years ended December 31, 1995.

Price Waterhouse LLP
Minneapolis, Minnesota
December 27, 1996