

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

POST-EFFECTIVE AMENDMENT NO. 1 ON FORM S-8
TO FORM S-4 REGISTRATION STATEMENT

Under
THE SECURITIES ACT OF 1933

Invitae Corporation

(Exact name of registrant as specified in its charter)

Delaware
 (State or other jurisdiction of
 incorporation or organization)
1400 16th Street
San Francisco, California
 (Address of principal executive offices)

27-1701898
 (I.R.S. Employer
 Identification No.)

94103
 (Zip Code)

Invitae Corporation 2015 Stock Incentive Plan
 (Full title of the plan)

Sean E. George, Ph.D.
 President and Chief Executive Officer
1400 16th Street San Francisco, California 94103
 (Name and address agent for service)

(415) 374-7782
 (Telephone number, including area code, of agent for service)

Copies to:

Thomas Brida
 General Counsel
 Invitae Corporation
 1400 16th Street
 San Francisco, California 94103
 (415) 374-7782

Mike Hird
 Gabriella A. Lombardi
 Pillsbury Winthrop Shaw Pittman LLP
 2550 Hanover Street
 Palo Alto, California 94304
 (650) 233-4500

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, 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 checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input 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.

CALCULATION OF REGISTRATION FEE

Title of Securities To Be Registered	Amount To Be Registered (1)	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee

Common Stock, \$0.0001 par value per share	3,702,332(2)	—(3)	—(3)	—(3)
--	--------------	------	------	------

- (1) Pursuant to Rule 416 of the Securities Act of 1933 (the “Securities Act”), this registration statement also covers any additional securities that may be offered or become issuable in respect of the shares registered hereby 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 Common Stock.
- (2) Represents shares of Common Stock issuable in the future upon exercise of outstanding options to purchase shares of common stock of ArcherDX, Inc., a Delaware corporation (“ArcherDX”), pursuant to the ArcherDX, Inc. 2015 Stock Incentive Plan, which options were converted into options to purchase shares of the Registrant’s Common Stock (the “Converted Options”) upon the consummation of the Registrant’s acquisition of ArcherDX on October 2, 2020, pursuant to the terms of the Agreement and Plan of Merger and Plan of Reorganization (the “Merger Agreement”), dated as of June 21, 2020, by and among the Registrant, Apollo Merger Sub A Inc., Apollo Merger Sub B LLC, ArcherDX, and Kyle Lefkoff, solely in his capacity as holders’ representative. The number of Common Stock issuable upon future settlement of the Converted Options was adjusted pursuant to the terms of the Merger Agreement, resulting in the registration of 3,702,332 shares of Common Stock under this Registration Statement relating to the Converted Options.
- (3) This Post-Effective Amendment No. 1 on Form S-8 covers securities that were originally registered on the Registrant’s Registration Statement on Form S-4 (File No. 333-240137), as amended. All filing fees payable in connection with the issuance of these securities were previously paid in connection with the filing of the Registration Statement on Form S-4, to which this Post-Effective Amendment No. 1 relates.

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

EXPLANATORY NOTE

The Registrant hereby amends its Registration Statement on Form S-4 (Registration No. 333-240137) originally filed on July 28, 2020, as amended by the Pre-Effective Amendment No. 1 filed on August 25, 2020 (as amended, the “Form S-4”), by filing this Post-Effective Amendment No. 1 on Form S-8 (the “Form S-8”) relating to 3,702,332 shares of the Registrant’s Common Stock issuable upon the exercise of options granted pursuant to the terms of the ArcherDX, Inc. 2015 Stock Incentive Plan (“ArcherDX Plan”). All such shares were previously registered on the Form S-4 but will be subject to issuance pursuant to this Post-Effective Amendment.

On October 2, 2020, upon the consummation of the Merger, ArcherDX became a wholly owned subsidiary of the Registrant. At the effective time of the Merger, each outstanding option under the ArcherDX Plan was converted into an option to purchase the Registrant’s Common Stock in accordance with the terms of the Merger Agreement.

PART I

INFORMATION REQUIRED IN SECTION 10(a) PROSPECTUS

The information required by Item 1 and Item 2 of Part I of Form S-8 is omitted from this filing in accordance with Rule 428 under the Securities Act, and the introductory 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 (the “Commission”) are hereby incorporated by reference in this Registration Statement:

- (a) [The Registrant’s Annual Report on Form 10-K for the year ended December 31, 2019;](#)
- (b) The Registrant’s Quarterly Reports on Form 10-Q for the quarters ended [March 31, 2020](#), [June 30, 2020](#) and [September 30, 2020](#);
- (c) The Registrant’s Current Reports on Form 8-K filed with the Commission on [March 10, 2020](#) (as amended on [March 16, 2020](#)), [April 1, 2020](#) (to the extent filed under Items 8.01 and 9.01), [April 6, 2020](#), [May 22, 2020](#), [June 12, 2020](#), [June 18, 2020](#), [June 22, 2020](#), [June 24, 2020](#), [June 26, 2020](#), [September 11, 2020](#), [October 1, 2020](#) (as amended on [October 5, 2020](#)), [October 5, 2020](#) and [November 5, 2020](#) (to the extent filed under Item 8.01); and
- (d) [The description of the Registrant’s Common Stock contained in Registrant’s registration statement on Form 8-A, filed on February 11, 2015 pursuant to Section 12\(b\) of the Securities Exchange Act of 1934 \(the “Exchange Act”\), including any amendment or report filed for the purpose of updating such description.](#)

In addition, all documents filed by the Registrant pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act (excluding any portions thereof furnished by the Registrant, including information furnished under Item 2.02 and Item 7.01 and any exhibits relating to Item 2.02 or Item 7.01 furnished under Item 9.01 of Form 8-K and any certification required by 18 U.S.C. § 1350), subsequent to the filing of this Registration Statement and 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 hereof from the date of filing such documents. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained in any subsequently filed document which also is deemed to be incorporated by reference herein modifies or supersedes such statement.

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 102(b)(7) of the Delaware General Corporation Law (“DGCL”) allows a corporation to provide in its certificate of incorporation that a director of the corporation will not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except where the director breached the duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of the DGCL or obtained an improper personal benefit. The Registrant’s certificate of incorporation provides for this limitation of liability.

Section 145 of the DGCL (“Section 145”) provides that a Delaware corporation may indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person is or was an officer, director, employee or agent of such corporation or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation’s best interests and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was illegal. A Delaware corporation may indemnify any persons who were or are a party to any threatened, pending or completed action or suit by or in the right of the corporation by reason of the fact that such person is or was a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys’ fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit, provided such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation’s best interests, provided that no indemnification is permitted without judicial approval if the officer, director, employee or agent is adjudged to be liable to the corporation. Where an officer or director is successful on the merits or otherwise in the defense of any action referred to above, the corporation must indemnify him or her against the expenses which such officer or director has actually and reasonably incurred.

Section 145 further authorizes a corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or enterprise, against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the corporation would otherwise have the power to indemnify him or her under Section 145.

The Registrant’s certificate of incorporation provides that, except to the extent that the DGCL prohibits the elimination or limitation of liability of directors for breaches of fiduciary duty, directors of the Registrant shall not be personally liable to the Registrant or its stockholders for monetary damages for any breach of their fiduciary duty as directors except (i) for any breach of the director’s duty of loyalty to the Registrant or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a known violation of law, (iii) under Section 174 of the DGCL or (iv) for any transaction from which the director derived an improper impersonal benefit. In addition, the Registrant’s certificate of incorporation provides that the Registrant shall indemnify each person who was or is a party, or is threatened to be made a party to, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was, or has agreed to become, one of the Registrant’s directors or officers or is or was serving, or has agreed to serve, at the Registrant’s request as a director, officer or trustee of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against all expenses, including attorneys’ fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding and any appeal therefrom, if he acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Registrant, and with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful.

All of the Registrant's directors and officers are covered by insurance policies maintained by the Registrant against specified liabilities for actions taken in their capacities as such, including liabilities under the Securities Act. Additionally, 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 Commission, such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable.

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 Pillsbury Winthrop Shaw Pittman LLP (included in Exhibit 5.1).
23.2	Consent of independent registered public accounting firm.
24.1	Power of Attorney (contained on the signature page hereto).
99.1	Invitae Corporation 2015 Stock Incentive Plan, as amended and restated as of June 12, 2020 (incorporated by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2020).

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 the 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. 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 a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement; and

(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) of this section shall not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 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 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 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 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 Act and will be governed by the final adjudication of such issue.

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 Post-Effective Amendment No. 1 on Form S-8 to Form S-4 Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized in the City of San Francisco, State of California, on this 5th day of November, 2020.

INVITAE CORPORATION

By /s/ Sean E. George, Ph.D.

Sean E. George, Ph.D.

President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Sean E. George and Shelly D. Guyer, and each of them, his or her true and lawful attorneys-in-fact and agents, each 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 on Form S-8, and to file the same, with 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, as fully for all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that each of said attorneys-in-fact and agents, or his or her substitute or substitutes may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this Post-Effective Amendment No. 1 on Form S-8 to Form S-4 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/ Sean E. George, Ph.D.</u> Sean E. George, Ph.D.	President and Chief Executive Officer <i>(Principal Executive Officer)</i>	November 5, 2020
<u>/s/ Shelly D. Guyer</u> Shelly D. Guyer	Chief Financial Officer <i>(Principal Financial Officer)</i>	November 5, 2020
<u>/s/ Robert F. Werner</u> Robert F. Werner	Chief Accounting Officer <i>(Principal Accounting Officer)</i>	November 5, 2020
<u>/s/ Eric Aguiar, M.D.</u> Eric Aguiar, M.D.	Director	November 5, 2020
<u>/s/ Geoffrey S. Crouse</u> Geoffrey S. Crouse	Director	November 5, 2020
<u>/s/ Christine M. Gorjanc</u> Christine M. Gorjanc	Director	November 5, 2020
<u>/s/ Kimber D. Lockhart</u> Kimber D. Lockhart	Director	November 5, 2020
<u>/s/ Jason W. Myers</u> Jason W. Myers	Director	November 5, 2020
<u>/s/ Chitra Nayak</u> Chitra Nayak	Director	November 5, 2020

PILLSBURY WINTHROP SHAW PITTMAN LLP
2550 Hanover Street
Palo Alto, California 94304

November 5, 2020

Invitae Corporation
1400 16th Street
San Francisco, California 94103

Re: Registration Statement on Form S-8

Ladies and Gentlemen:

We are acting as counsel for Invitae Corporation, a Delaware corporation (the "Company"), in connection with the Post-Effective Amendment No. 1 on Form S-8 to Form S-4 Registration Statement (the "Registration Statement") relating to the registration under the Securities Act of 1933 (the "Act") of 3,702,332 shares of the Company's common stock, \$0.0001 par value per share (the "Shares"), issuable pursuant to the Invitae Corporation 2015 Stock Incentive Plan (the "Plan").

We have reviewed and are familiar with such corporate proceedings and other matters as we have considered relevant or necessary for the opinions expressed in this letter. Based upon the foregoing, we are of the opinion that the Shares have been duly authorized and, when issued and sold in accordance with the Plan, will be validly issued, fully paid and nonassessable. The opinions set forth in this letter are limited to the General Corporation Law of the State of Delaware, as in effect on the date hereof.

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

Very truly yours,

/s/ Pillsbury Winthrop Shaw Pittman LLP

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Post-Effective Amendment No. 1 on Form S-8 to Form S-4 Registration Statement (File No. 333-240137) of Invitae Corporation for the registration of 3,702,332 shares of its common stock, of our reports dated February 28, 2020, with respect to the consolidated financial statements of Invitae Corporation and the effectiveness of internal control over financial reporting of Invitae Corporation, included in its Annual Report (Form 10-K) for the year ended December 31, 2019, filed with the Securities and Exchange Commission.

/s/ Ernst & Young, LLP

Redwood City, California

November 5, 2020