

BROADVISION INC  
Form S-8  
November 08, 2013

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UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

BROADVISION, INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware  
(State or Other Jurisdiction

94-3184303  
(I.R.S. Employer Identification No.)

of Incorporation or Organization)

1700 Seaport Blvd, Suite 210  
Redwood City, California  
(Address of principal executive offices)

94063  
(Zip code)

Employee Stock Purchase Plan

(Full Title of the Plan)

Pehong Chen

Chairman of the Board, President, and Chief Executive Officer

BroadVision, Inc.

1700 Seaport Boulevard, Suite 210, Redwood City, California 94063

(650) 331-1000

(Name, Address and Telephone Number, Including Area Code, of Agent for Service)

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Copies to:

Kenneth L. Guernsey

Cooley LLP

101 California Street, 5th Floor

San Francisco, CA 94111

(415) 693-2000

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Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "small reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer   Accelerated filer   Non-accelerated filer (Do not check if a smaller reporting company)  
Smaller reporting company

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## CALCULATION OF REGISTRATION FEE

Title of Securities to be registered	Amount to be Registered (1)	Proposed Maximum Offering Price Per Share (2)	Proposed Maximum Aggregate Offering Price (2)	Amount of Registration Fee
Shares of Common Stock, par value \$.0001 per share, reserved for future issuance under the Employee Stock Purchase Plan	200,000	\$ 9.67	\$ 1,934,000	\$ 263.80
Total	200,000	\$ 9.67	\$ 1,934,000	\$ 263.80

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the "Act"), this registration statement shall also cover any additional shares of Common Stock issuable under the registrant's Employee Stock Purchase Plan (the "Plan") by reason of any stock splits, stock dividends, recapitalization or other similar transaction effected without the receipt of consideration that results in an increase or decrease in the number of outstanding shares of the registrant's Common Stock.
- (2) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(c) of the Act. The proposed maximum offering price per share and proposed maximum aggregate offering price are based upon the average of the high and low prices of the registrant's Common Stock as reported on the NASDAQ Global Market® on November 7, 2013.

## EXPLANATORY NOTE

This Registration Statement on Form S-8 is being filed for the purpose of registering an additional 200,000 shares of Registrant's Common Stock to be issued pursuant to the Registrant's Employee Stock Purchase Plan.

INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The contents of Registration Statements on Form S-8 No. 333-14057, No. 333-62619, No. 333-35114, No. 333-63798, No. 333-97521, No. 333-109709 and No. 333-145764 filed with the Securities and Exchange Commission on October 15, 1996, August 31, 1998, April 19, 2000, June 25, 2001, August 1, 2002, October 15, 2003 and August 28, 2007, respectively, are incorporated by reference herein.

EXHIBITS

Exhibit Number	Description
4.1(1)	Amended and Restated Certificate of Incorporation.
4.2(2)	Certificate of Amendment of Certificate of Incorporation.
4.3(3)	Certificate of Amendment of Certificate of Incorporation.
4.4(4)	Amended and Restated Bylaws.
4.5(5)	Registration Rights Agreement, dated November 10, 2004, among the Company and certain investors listed on Exhibit A thereto.
4.6(6)	Registration Rights Agreement, dated March 8, 2006, between the Company and Honu Holdings LLC.
5.1	Opinion of Cooley, LLP.
23.1	Consent of OUM & Co. LLP, Independent Registered Public Accounting Firm.
23.2	Consent of Cooley, LLP is contained in Exhibit 5.1 to this registration statement.
24.1	Power of Attorney is contained on the signature pages.
99.1(7)	Employee Stock Purchase Plan, as amended.

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(1) Previously filed as Exhibit 3.1 to the Company's Registration Statement on Form S-1 filed as Exhibit 3.1 thereto on April 19, 1996 as amended by Amendment No. 1 filed on May 9, 1996, Amendment No. 2 filed on May 29, 1996 and Amendment No. 3 filed on June 17, 1996, and incorporated herein by reference (File No. 333-03844).

(2) Previously filed as Exhibit 3.3 to the Company's Annual Report on Form 10-K filed on March 27, 2007 and incorporated herein by reference (File No. 000-28252).

(3) Previously filed as Exhibit 4.6 to the Company's Quarterly Report on Form 10-Q filed on November 6, 2008 and incorporated herein by reference (File No. 000-28252).

(4) Previously filed as Exhibit 3.4 to the Company's Current Report on Form 8-K filed on October 16, 2008, and incorporated herein by reference (File No. 000-28252).

(5) Previously filed as Exhibit 4.4 to the Company's Registration Statement on Form S-1 filed on December 20, 2004, and incorporated herein by reference (File No. 000-28252).

(6) Previously filed as Exhibit 4.5 to the Company's Annual Report on Form 10-K filed on June 9, 2006, and incorporated herein by reference (File No. 000-28252).

(7) Previously filed as Exhibit 99.1 to the Company's Registration Statement on Form S-8 (File No. 333-145764), filed August 29, 2007, and incorporated herein by reference.

## UNDERTAKINGS

1. The undersigned registrant hereby undertakes:

(a) 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 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 SEC 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.

(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)(i) and (a)(ii) do 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 SEC by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) (the "Exchange Act") that are incorporated by reference in the registration statement.

(b) That, for the purpose of determining any liability under the Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) 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.

(d) That, for the purpose of determining liability of the registrant under the Act to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

2. The undersigned registrant hereby undertakes that, for purposes of determining any liability under the 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 herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

3. Insofar as indemnification for liabilities arising under the 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 SEC 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

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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.

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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 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 Redwood City, State of California, on this 8th day of November, 2013.

BroadVision, Inc.

By: /s/ Pehong  
Chen  
Pehong  
Chen  
Chairman  
of the  
Board,  
President,  
and Chief  
Executive  
Officer

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## POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Pehong Chen his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him and in his 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 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 connection therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his substitutes or substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Pehong Chen	Chairman of the Board, President, Chief Executive Officer (Principal Executive Officer)	November 8, 2013
Pehong Chen		
/s/ Shin-Yuan Tzou	Chief Financial Officer (Principal Financial and Accounting Officer)	November 8, 2013
Shin-Yuan Tzou		
/s/ James D. Dixon	Director	November 8, 2013
James D. Dixon		

/s/ Robert  
Lee

Director

November 8,  
2013

Robert Lee

/s/ François Stieger

Director

November 8,  
2013

François Stieger

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