

Identiv, Inc.  
Form S-8  
August 22, 2014

As filed with the U.S. Securities and Exchange Commission on August 22, 2014

Registration Statement No. 333-

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
**WASHINGTON, DC 20549**

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

**Identiv, Inc.**

**(Exact name of registrant as specified in its charter)**

**Delaware**  
**(State or other jurisdiction of**  
**incorporation or organization)**

**77-0444317**  
**(I.R.S. Employer**  
**Identification Number)**  
**39300 Civic Center Drive, Suite 160**

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**Fremont, California 94538**

**Tel.: (949) 250-8888**

**(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)**

**Identiv, Inc. 2011 Incentive Compensation Plan**

**Jason Hart**

**Chief Executive Officer**

**Identiv, Inc.**

**39300 Civic Center Drive, Suite 160**

**Fremont, California 94538**

**Tel.: (949) 250-8888**

**(Name, address, including zip code, and telephone number, including area code, of agent for service)**

*Copies to:*

**Curtis L. Mo, Esq.**

**DLA Piper LLP (US)**

**2000 University Avenue**

**East Palo Alto, CA 94303**

**Tel.: (650) 833-2000**

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 definition of large accelerated filer, accelerated filer and smaller 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

**CALCULATION OF REGISTRATION FEE**

<b>Title of securities to be registered</b>	<b>Amount to be registered (1)</b>	<b>Proposed maximum offering price per share (2)</b>	<b>Proposed maximum aggregate offering price (2)</b>	<b>Amount of registration fee</b>
Common Stock, \$0.001 par value per share	1,000,000	\$14.25	\$14,250,000	\$1,835.41

- (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 Common Stock which become issuable under the Identiv, Inc. 2011 Incentive Compensation Plan (the 2011 Plan) by reason of any stock dividend, stock split, recapitalization or any other similar transaction effected without the receipt of consideration which increases the number of shares of the Registrant's outstanding shares of Common Stock.
- (2) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(c) and (h) of the Securities Act. The price per share and aggregate offering price are based upon the average of the high and low sales prices of Registrant's Common Stock on August 20, 2014, as reported on the Nasdaq Capital Market.

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**EXPLANATORY NOTE**

This Registration Statement registers an aggregate 1,000,000 newly reserved shares of common stock, par value \$0.001 per share (the Common Stock), of Identiv, Inc. (as adjusted for the Registrant's 1 for 10 reverse stock split effective May 23, 2014) that have been or may be issued and sold, under the 2011 Plan. In accordance with General Instruction E to Form S-8, the contents of the Registrant's Registration Statement on Form S-8 (Registration No. 333-174837) previously filed by the Registrant with the Securities and Exchange Commission (the Commission) on June 10, 2011 are incorporated herein by reference, except as amended hereby.

**PART I**

**INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS**

As permitted by the rules of the Securities and Exchange Commission (the Commission), this Registration Statement omits the information specified in Part I of Form S-8. The documents containing the information specified in Part I will be delivered to the participants in the plan as required by Rule 428(b)(1) under the Securities Act.

**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

The Registrant is subject to the informational and reporting requirements of Sections 13(a), 13(c), 14, and 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act), and in accordance therewith files reports, proxy statements and other information with the Commission. The following documents, which are on file with the Commission, are incorporated by reference in this Registration Statement:

- (a) the Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2013;
- (b) all other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the document referred to in (a) above (in each case, except for the information furnished under Items 2.02 in any current report on Form 8-K);
- (c) the description of the Registrant's Common Stock contained in its Registration Statement on Form 8-A, filed with the Commission on September 5, 1997 (which incorporates the Registrant's Description of Capital Stock included in the Registrant's 424(b)(4) prospectus, File No. 333-29073, as filed with the Commission on October 7, 1997), including any amendment or report filed for the purpose of updating such description.

In addition, all documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14, or 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 into this Registration Statement and to be a part hereof from the date of filing of 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 herein, or in any 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.

**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 145(a) of the Delaware General Corporation Law, the Registrant 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 (other than an action by or in the right of the corporation) by reason of the fact that the person is or was a director, officer, agent or employee of the Registrant or is or was serving at the Registrant's request as a director, officer, agent, or employee of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgment, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding. Pursuant to Section 145(b) of the Delaware General Corporation Law, the power to indemnify also applies to actions brought by or in the right of the corporation as well, but only to the extent of defense expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit. Pursuant to Section 145(b), the Registrant shall not indemnify any person in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to us unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper. The power to indemnify under Sections 145(a) and (b) of the Delaware General Corporation Law applies (i) if such person is successful on the merits or otherwise in defense of any action, suit or proceeding, or (ii) if such person acted in good faith and in a manner he reasonably believed to be in the best interest, or not opposed to the best interest, of the corporation, and with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful.

Section 145(g) of the Delaware General Corporation Law provides that a corporation shall have the power to purchase and maintain insurance on behalf of its officers, directors, employees and agents, against any liability asserted against and incurred by such persons in any such capacity.

Section 174 of the Delaware General Corporation Law provides, among other things, that a director, who willfully or negligently approves of an unlawful payment of dividends or an unlawful stock purchase or redemption, may be held liable for such actions. A director who was either absent when the unlawful actions were approved or dissented at the time, may avoid liability by causing his or her dissent to such actions to be entered in the books containing the minutes of the meetings of the board of directors at the time such action occurred or immediately after such absent director receives notice of the unlawful acts.

The Registrant's amended and restated certificate of incorporation, as amended, provides that the Registrant's directors shall not be liable to the Registrant or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent that the exculpation from liabilities is not permitted under the Delaware General Corporation Law as in effect at the time such liability is determined. In addition, the Registrant's amended and restated certificate of incorporation, as amended, provides that the Registrant shall indemnify its directors to the fullest extent permitted by the laws of the State of Delaware.

The Registrant's directors and officers are covered by insurance policies maintained by us against specified liabilities for actions taken in their capacities as such, including liabilities under the Securities Act. In addition, the Registrant has entered into indemnification agreements with each of its directors that provide for indemnification and expense advancement to the fullest extent permitted under the Delaware General Corporation Law.

The indemnification provisions contained in the Registrant's amended and restated certificate of incorporation, as amended, and amended and restated by-laws are not exclusive of any other rights to which a person may be entitled by law, agreement, vote of stockholders or disinterested directors or otherwise.

The foregoing is only a general summary of certain aspects of Delaware law and the Registrant's amended and restated certificate of incorporation and amended and restated by-laws dealing with indemnification of directors and officers,

and does purport to be complete. It is qualified in its entirety by reference to the detailed provisions of the Delaware General Corporation Law and the Registrant's our amended and restated certificate of incorporation and amended and restated by-laws.

**Item 7. Exemption From Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

The Exhibit Index immediately preceding the exhibits is incorporated herein by reference.

**Item 9. Undertakings.**

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, or the Securities Act of 1933;
- (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 this Registration Statement. Notwithstanding the foregoing, any increase or decrease in the 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; and
- (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;

*provided, however*, that paragraphs (1)(i), (1)(ii) and (1)(iii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended, or Exchange Act, that are incorporated by reference in this Registration Statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the Registration Statement.

(2) That, for the purposes 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 the 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.

(4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:

(A) Each prospectus filed by the Registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(B) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1), (vii), or (x) for the purpose of providing the information required by section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof; *provided, however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

The 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 15(d) of the Exchange Act that is incorporated by reference in 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.

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 indemnification provisions described herein, 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, 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 Fremont, California, on August 22, 2014.

IDENTIV, INC.

By: /s/ BRIAN NELSON  
 Brian Nelson  
 Chief Financial Officer and Secretary

**POWER OF ATTORNEY**

**KNOW ALL PERSONS BY THESE PRESENTS**, Each person whose signature to this registration statement appears below hereby constitutes and appoints each of Jason Hart and Brian Nelson as such person's true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for such person and in such person's name, place and stead, in any and all capacities, to sign any and all amendments to the registration statement, including post-effective amendments, and registration statements filed pursuant to Rule 462 under the Securities Act of 1933, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, and does hereby grant unto each said attorney-in-fact and agent 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, as fully to all intents and purposes as such person might or could do in person, hereby ratifying and confirming all that each said attorney-in-fact and agents or any of them, or their substitutes, 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:

<b>Signature</b>	<b>Title</b>	<b>Date</b>
/s/ JASON HART	Chief Executive Officer	August 22, 2014
Jason Hart	(Principal Executive Officer) and Director	
/s/ BRIAN NELSON	Chief Financial Officer and Secretary	August 22, 2014
Brian Nelson	(Principal Financial Officer)	
/s/ KAMAL KANT GUPTA	Vice-President Finance and Corporate Controller	August 22, 2014
Kamal Kant Gupta	(Principal Accounting Officer)	
/s/ STEVEN HUMPHREYS	Chairman of the Board and Director	August 22, 2014
Steven Humphreys		

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<i>/s/ SAAD ALAZEM</i> Saad Alazem	Director	August 22, 2014
<i>/s/ GARY KREMEN</i> Gary Kremen	Director	August 22, 2014
<i>/s/ DANIEL S. WENZEL</i> Daniel S. Wenzel	Director	August 22, 2014
<i>/s/ JAMES E. OUSLEY</i> James E. Ousley	Director	August 22, 2014

**EXHIBIT INDEX**

<b>Exhibit Number</b>	<b>Exhibit</b>
4.1	Specimen Registrant's Common Stock Certificate (Incorporated by reference to Exhibit 4.1 to the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2010 (File No. 000-29440).)
*5.1	Opinion of DLA Piper LLP (US)
*23.1	Consent of DLA Piper LLP (US) (included in Exhibit 5.1)
*23.2	Consent of Ernst & Young GmbH, an independent registered public accounting firm
*23.3	Consent of Deloitte & Touche GmbH, an independent registered public accounting firm
*99.1	Identiv, Inc. 2011 Incentive Compensation Plan, as amended

\*Filed herewith.