

EMISPHERE TECHNOLOGIES INC

Form SC 13D/A

June 05, 2012

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SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 13D

Rule 13d-101

**INFORMATION TO BE INCLUDED IN STATEMENTS FILED PURSUANT TO § 240.13d-1(a) AND
AMENDMENTS THERETO FILED PURSUANT TO § 240.13d-2(a)**

(Amendment No. 15)*

Emisphere Technologies, Inc.

(Name of Issuer)

**Common Stock, Par Value \$.01 Per Share
(Title of Class of Securities)**

**291345106
(CUSIP Number)**

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Doron Lipshitz, Esq.

O Melveny & Myers LLP

7 Times Square

New York, New York 10036

(212) 326-2000

(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications)

June 1, 2012

(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of §§240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box " ".

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See §240.13d-7 for other parties to whom copies are to be sent.

* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page. The information required on the remainder of this cover page shall not be deemed to be filed for the purpose of Section 18 of the Securities Exchange Act of 1934 (Act) or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

Continued on following pages

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291345106

13D

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1 NAME OF REPORTING PERSONS

MHR CAPITAL PARTNERS MASTER ACCOUNT LP

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions)

(a) ☐ (b) ☒

3 SEC USE ONLY

4 SOURCE OF FUNDS (See Instructions)

N/A

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e) ☐

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Anguilla, British West Indies

7 ☐ SOLE VOTING POWER

NUMBER OF

10,430,736

SHARES 8 ☐ SHARED VOTING POWER

BENEFICIALLY

OWNED BY

0

EACH 9 ☐ SOLE DISPOSITIVE POWER

REPORTING

PERSON 10,430,736

10 ☐ SHARED DISPOSITIVE POWER

WITH

0

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11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

10,430,736

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (See Instructions) ..

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

16.1%

14 TYPE OF REPORTING PERSON (See Instructions)

PN

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1 NAME OF REPORTING PERSONS

MHR ADVISORS LLC

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions)

(a) ☐ (b) ☒

3 SEC USE ONLY

4 SOURCE OF FUNDS (See Instructions)

N/A

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e) ☐

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware

7 ☐ SOLE VOTING POWER

NUMBER OF

SHARES 11,851,438
8 ☐ SHARED VOTING POWER

BENEFICIALLY

OWNED BY 0
EACH 9 ☐ SOLE DISPOSITIVE POWER

REPORTING

PERSON 11,851,438
10 ☐ SHARED DISPOSITIVE POWER
WITH

0

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11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

11,851,438

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (See Instructions) ..

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

18.1%

14 TYPE OF REPORTING PERSON (See Instructions)

OO

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1 NAME OF REPORTING PERSONS

MHR INSTITUTIONAL PARTNERS II LP
2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions)

(a) " (b) x

3 SEC USE ONLY

4 SOURCE OF FUNDS (See Instructions)

N/A
5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e) "

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware
7 SOLE VOTING POWER

NUMBER OF
SHARES 7,434,357
8 SHARED VOTING POWER

BENEFICIALLY

OWNED BY 0
EACH 9 SOLE DISPOSITIVE POWER

REPORTING

PERSON 7,434,357
10 SHARED DISPOSITIVE POWER
WITH

0

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11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

7,434,357

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (See Instructions) ..

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

11.5%

14 TYPE OF REPORTING PERSON (See Instructions)

PN

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1 NAME OF REPORTING PERSONS

MHR INSTITUTIONAL PARTNERS IIA LP

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions)

(a) ☐ (b) ☒

3 SEC USE ONLY

4 SOURCE OF FUNDS (See Instructions)

N/A

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e) ☐

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware

7 ☐ SOLE VOTING POWER

NUMBER OF

18,729,411

SHARES 8 ☐ SHARED VOTING POWER

BENEFICIALLY

OWNED BY

0

EACH 9 ☐ SOLE DISPOSITIVE POWER

REPORTING

PERSON 18,729,411

10 ☐ SHARED DISPOSITIVE POWER

WITH

0

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11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

18,729,411

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (See Instructions) ..

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

26.3%

14 TYPE OF REPORTING PERSON (See Instructions)

PN

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1 NAME OF REPORTING PERSONS

MHR INSTITUTIONAL ADVISORS II LLC

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions)

(a) ☐ (b) ☒

3 SEC USE ONLY

4 SOURCE OF FUNDS (See Instructions)

N/A

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e) ☐

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware

7 ☐ SOLE VOTING POWER

NUMBER OF

26,163,768

SHARES

8 ☐ SHARED VOTING POWER

BENEFICIALLY

OWNED BY

0

EACH

9 ☐ SOLE DISPOSITIVE POWER

REPORTING

PERSON

26,163,768

10 ☐ SHARED DISPOSITIVE POWER

WITH

0

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11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

26,163,768

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (See Instructions) ..

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

34.7%

14 TYPE OF REPORTING PERSON (See Instructions)

OO

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1 NAME OF REPORTING PERSONS

MHR FUND MANAGEMENT LLC
2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions)

(a) " (b) x

3 SEC USE ONLY

4 SOURCE OF FUNDS (See Instructions)

N/A
5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e) "

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware
7 SOLE VOTING POWER

NUMBER OF
SHARES 38,015,206
8 SHARED VOTING POWER

BENEFICIALLY

OWNED BY 0
EACH 9 SOLE DISPOSITIVE POWER

REPORTING

PERSON 38,015,206
10 SHARED DISPOSITIVE POWER
WITH

0

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11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

38,015,206

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (See Instructions) ..

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

47.4%

14 TYPE OF REPORTING PERSON (See Instructions)

OO

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1 NAME OF REPORTING PERSONS

MARK H. RACHESKY, M.D.

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions)

(a) ☐ (b) ☒

3 SEC USE ONLY

4 SOURCE OF FUNDS (See Instructions)

N/A

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e) ☐

6 CITIZENSHIP OR PLACE OF ORGANIZATION

United States of America

7 ☐ SOLE VOTING POWER

NUMBER OF

38,229,504

SHARES 8 ☐ SHARED VOTING POWER

BENEFICIALLY

OWNED BY

0

EACH 9 ☐ SOLE DISPOSITIVE POWER

REPORTING

PERSON 38,229,504

10 ☐ SHARED DISPOSITIVE POWER

WITH

0

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11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

38,229,504

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (See Instructions) ..

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

47.5%

14 TYPE OF REPORTING PERSON (See Instructions)

IN; HC

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This statement on Schedule 13D (this Statement) further amends and supplements, as Amendment No. 15, the Schedule 13D filed on October 6, 2005 (the Initial 13D), as amended by Amendment No. 1, filed on January 17, 2006 (Amendment No. 1), Amendment No. 2, filed on May 11, 2006 (Amendment No. 2), Amendment No. 3, filed on August 20, 2007 (Amendment No. 3), Amendment No. 4, filed on August 24, 2007 (Amendment No. 4), Amendment No. 5, filed on July 2, 2008 (Amendment No. 5), Amendment No. 6, filed on July 2, 2009 (Amendment No. 6), Amendment No. 7, filed on August 21, 2009 (Amendment No. 7), Amendment No. 8, filed on August 25, 2009 (Amendment No. 8), Amendment No. 9, filed on June 9, 2010 (Amendment No. 9), Amendment No. 10, filed on August 2, 2010 (Amendment No. 10), Amendment No. 11, filed on August 27, 2010 (Amendment No. 11), Amendment No. 12, filed on December 22, 2010 (Amendment No. 12), Amendment No. 13, filed on July 1, 2011 (Amendment No. 13) and Amendment No. 14, filed on July 8, 2011 (Amendment No. 14), and, together with the Initial 13D, Amendment No. 1, Amendment No. 2, Amendment No. 3, Amendment No. 4, Amendment No. 5, Amendment No. 6, Amendment No. 7, Amendment No. 8, Amendment No. 9, Amendment No. 10, Amendment No. 11, Amendment No. 12 and Amendment No. 13, the Schedule 13D) and relates to shares of common stock, par value \$0.01 per share (the Shares), of Emisphere Technologies, Inc. (the Issuer). Certain of the securities reported herein were previously reported on Schedule 13G, which was filed on April 8, 2005. Defined terms used in this Statement but not defined herein shall have the respective meanings given such terms in Amendment No. 9.

Item 4. Purpose of Transaction

Item 4 is hereby amended to add the following:

The information set forth in Item 6 below and Exhibits 1 and 2 to this Statement is incorporated into this Item 4 by reference.

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Item 5. Interest in Securities of the Issuer

Item 5 is hereby amended by deleting such item in its entirety and replacing it with the following:

The percentages set forth in this Statement are based on information contained in the Issuer's Form 10-Q for the quarterly period ended March 31, 2012, which disclosed that there were 60,687,478 Shares outstanding as of May 1, 2012.

All percentages of beneficial ownership presented herein are calculated after giving effect to the issuance of the Shares pursuant to exercise or vesting of Warrants, restricted stock or stock options currently owned by the Reporting Persons, and assuming such Reporting Person's Convertible Notes were converted into Shares as of such date.

(a) (i) Master Account may be deemed the beneficial owner of 10,430,736 Shares (approximately 16.1% of the total number of Shares outstanding, calculated in accordance with Rule 13d-3(d)(1)(i) under the Act). This number consists of (A) 6,226,054 Shares held for the account of Master Account, (B) 2,704,898 Shares that can be obtained by Master Account upon exercise of warrants to acquire Shares and (C) 1,499,784 Shares that can be obtained by Master Account upon the conversion of the Convertible Notes.

(ii) Capital Partners (100) may be deemed the beneficial owner of 1,420,702 Shares (approximately 2.3% of the total number of Shares outstanding, calculated in accordance with Rule 13d-3(d)(1)(i) under the Act). This number consists of (A) 847,125 Shares held for the account of Capital Partners (100), (B) 368,479 Shares that can be obtained by Capital Partners (100) upon exercise of warrants to acquire Shares and (C) 205,098 Shares that can be obtained by Capital Partners (100) upon the conversion of the Convertible Notes.

(iii) Advisors may be deemed the beneficial owner of 11,851,438 Shares (approximately 18.1% of the total number of Shares outstanding, calculated in accordance with Rule 13d-3(d)(1)(i) under the Act). This number consists of (A) (1) 6,226,054 Shares held for the account of Master Account, (2) 2,704,898 Shares that can be obtained by Master Account upon exercise of warrants to acquire Shares and (3) 1,499,784 Shares that can be obtained by Master Account upon the conversion of the Convertible Notes, and (B) (1) 847,125 Shares held for the account of Capital Partners (100), (2) 368,479 Shares that can be obtained by Capital Partners (100) upon exercise of warrants to acquire Shares and (3) 205,098 Shares that can be obtained by Capital Partners (100) upon the conversion of Convertible Notes.

(iv) Institutional Partners II may be deemed the beneficial owner of 7,434,357 Shares (approximately 11.5% of the total number of Shares outstanding, calculated in accordance with Rule 13d-3(d)(1)(i) under the Act). This number consists of (A) 3,240,750 Shares held for the account of Institutional Partners II, (B) 2,561,720 Shares that can be obtained by Institutional Partners II upon the exercise of warrants to acquire Shares and (C) 1,631,887 Shares that can be obtained by Institutional Partners II upon the conversion of the Convertible Notes.

(v) Institutional Partners IIA may be deemed the beneficial owner of 18,729,411 Shares (approximately 26.3% of the total number of Shares outstanding, calculated in accordance with Rule 13d-3(d)(1)(i) under the Act). This number consists of (A) 8,164,436 Shares held for the account of Institutional Partners IIA, (B) 6,453,752 Shares that can be obtained by Institutional Partners IIA upon the exercise of warrants to acquire Shares and (C) 4,111,223 Shares that can be obtained by Institutional Partners IIA upon the conversion of the Convertible Notes.

(vi) Institutional Advisors II may be deemed the beneficial owner of 26,163,768 Shares (approximately 34.7% of the total number of Shares outstanding, calculated in accordance with Rule 13d-3(d)(1)(i) under the Act). This number consists of (A) (1) 3,240,750 Shares held for the account of Institutional Partners II, (2) 2,561,720 Shares that can be obtained by Institutional Partners II upon the exercise of warrants to acquire Shares and (3) 1,631,887 Shares that can be obtained by Institutional Partners II upon the conversion of the Convertible Notes, and (B) (1) 8,164,436 Shares held for the account of Institutional Partners IIA, (2) 6,453,752 Shares that can be obtained by Institutional Partners IIA upon the exercise of warrants to acquire Shares and (3) 4,111,223 Shares that can be obtained by Institutional Partners IIA upon the conversion of the Convertible Notes.

(vii) Fund Management may be deemed the beneficial owner of 38,015,206 Shares (approximately 47.4% of the total number of Shares outstanding, calculated in accordance with Rule 13d-3(d)(1)(i) under the Act). This number consists of all of the Shares otherwise described in this Item 5(a) by virtue of Fund Management's investment management agreement with Master Account, Capital Partners (100), Institutional Partners II and Institutional Partners IIA.

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(viii) Dr. Rachesky may be deemed the beneficial owner of 38,229,504 Shares (approximately 47.5% of the total number of Shares outstanding, calculated in accordance with Rule 13d-3(d)(1)(i) under the Act). This number consists of (A) all of the Shares otherwise described in this Item 5(a) by virtue of Dr. Rachesky's position as the managing member of each of Fund Management, Advisors and Institutional Advisors II, (B) 14,000 Shares that can be obtained upon the exercise of certain options to purchase Shares, (C) 195,000 Shares that can be obtained upon the exercise of certain non-qualified stock options to purchase Shares and (D) 5,298 Shares held for his own account.

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(b) (i) Master Account may be deemed to have (x) the sole power to direct the disposition of 10,430,736 Shares which may be deemed to be beneficially owned by Master Account as described above, and (y) the sole power to direct the voting of 10,430,736 Shares which may be deemed to be beneficially owned by Master Account as described above.

(ii) Capital Partners (100) may be deemed to have (x) the sole power to direct the disposition of 1,420,702 Shares which may be deemed to be beneficially owned by Capital Partners (100) as described above, and (y) the sole power to direct the voting of 1,420,702 Shares which may be deemed to be beneficially owned by Capital Partners (100) as described above.

(iii) Advisors may be deemed to have (x) the sole power to direct the disposition of 11,851,438 Shares which may be deemed to be beneficially owned by Advisors as described above, and (y) the sole power to direct the voting of 11,851,438 Shares which may be deemed to be beneficially owned by Advisors as described above.

(iv) Institutional Partners II may be deemed to have (x) the sole power to direct the disposition of 7,434,357 Shares which may be deemed to be beneficially owned by Institutional Partners II as described above, and (y) the sole power to direct the voting of 7,434,357 Shares which may be deemed to be beneficially owned by Institutional Partners II as described above.

(v) Institutional Partners IIA may be deemed to have (x) the sole power to direct the disposition of 18,729,411 Shares which may be deemed to be beneficially owned by Institutional Partners IIA as described above, and (y) the sole power to direct the voting of 18,729,411 Shares which may be deemed to be beneficially owned by Institutional Partners IIA as described above.

(vi) Institutional Advisors II may be deemed to have (x) the sole power to direct the disposition of 26,163,768 Shares which may be deemed to be beneficially owned by Institutional Advisors II as described above, and (y) the sole power to direct the voting of 26,163,768 Shares which may be deemed to be beneficially owned by Institutional Advisors II as described above.

(vii) Fund Management may be deemed to have (x) the sole power to direct the disposition of the 38,015,206 Shares which may be deemed to be beneficially owned by Fund Management as described above, and (y) the sole power to direct the voting of 38,015,206 Shares which may be deemed to be beneficially owned by Fund Management as described above.

(viii) Dr. Rachesky may be deemed to have (x) the sole power to direct the disposition of the 38,229,504 Shares which may be deemed to be beneficially owned by Dr. Rachesky as described above, and (y) the sole power to direct the voting of 38,229,504 Shares which may be deemed to be beneficially owned by Dr. Rachesky as described above.

(c) On May 31, 2012, the Issuer granted Dr. Rachesky 40,000 non-qualified stock options.

(d) (i) The partners of Master Account, including Advisors, have the right to participate in the receipt of dividends from, or proceeds from the sale of, the securities held for the account of Master Account in accordance with their partnership interests in Master Account.

(ii) The partners of Capital Partners (100), including Advisors, have the right to participate in the receipt of dividends from, or proceeds from the sale of, the securities held for the account of Capital Partners (100) in accordance with their partnership interests in Capital Partners (100).

(iii) The partners of Institutional Partners II, including Institutional Advisors II, have the right to participate in the receipt of dividends from, or proceeds from the sale of, the securities held for the account of Institutional Partners II in accordance with their partnership interests in Institutional Partners II.

(iv) The partners of Institutional Partners IIA, including Institutional Advisors II, have the right to participate in the receipt of dividends from, or proceeds from the sale of, the securities held for the account of Institutional Partners IIA in accordance with their partnership interests in Institutional Partners IIA.

(e) Not applicable.

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Item 6. Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Issuer

In connection with the Reimbursement Note and the Second Reimbursement Note in aggregate principal amounts of \$500,000 and \$100,000, respectively, issued to reimburse MHR for its legal fees incurred in connection with the MHR Agreement, the Letter Agreement, and the Other MHR Agreement and related matters as described in Item 4 to Amendment No. 9, on June 1, 2012, each of Master Account, Capital Partners (100), Institutional Partners II and Institutional Partners IIA entered into agreements with the Issuer (collectively, the Note Extension Agreements) pursuant to which each of Master Account, Capital Partners (100), Institutional Partners II and Institutional Partners IIA, respectively, agreed, as creditor under the Reimbursement Note and the Second Reimbursement Note, to extend the Maturity Date therein (as defined in the Reimbursement Note and the Second Reimbursement Note) from June 8, 2012 to September 26, 2012, subject to the terms and conditions set forth under the Note Extension Agreements.

The form of Note Extension Agreements entered into between the Issuer and each of Master Account, Capital Partners (100), Institutional Partners II and Institutional Partners IIA in connection with the Reimbursement Note (the Reimbursement Note Extension) and the form of Note Extension Agreements entered into between the Issuer and each of Master Account, Capital Partners (100), Institutional Partners II and Institutional Partners IIA in connection with the Second Reimbursement Note (the Second Reimbursement Note Extension) are incorporated into this Item 6 as Exhibit 1 and Exhibit 2 hereto.

The foregoing discussion of the Note Extension Agreements is qualified in its entirety by reference to the full text of the form of Reimbursement Note Extension and the form of Second Reimbursement Note Extension attached as Exhibit 1 and Exhibit 2 hereto respectively.

Item 7. Materials to be Filed as Exhibits

Exhibit No.	Description
1	Form of Reimbursement Note Extension (incorporated by reference to Exhibit 10.1 to the Issuer's Current Report on Form 8-K filed on June 4, 2012).
2	Form of Second Reimbursement Note Extension (incorporated by reference to Exhibit 10.2 to the Issuer's Current Report on Form 8-K filed on June 4, 2012).

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SIGNATURES

After reasonable inquiry and to the best of my knowledge and belief, the undersigned certifies that the information set forth in this Statement is true, complete and correct.

Date: June 5, 2012

MHR CAPITAL PARTNERS MASTER ACCOUNT LP

By: MHR Advisors LLC,
its General Partner

By: /s/ Janet Yeung
Name: Janet Yeung
Title: Authorized Signatory

MHR ADVISORS LLC

By: /s/ Janet Yeung
Name: Janet Yeung
Title: Authorized Signatory

MHR INSTITUTIONAL PARTNERS II LP

By: MHR Institutional Advisors II LLC,
its General Partner

By: /s/ Janet Yeung
Name: Janet Yeung
Title: Authorized Signatory

MHR INSTITUTIONAL PARTNERS IIA LP

By: MHR Institutional Advisors II LLC,
its General Partner

By: /s/ Janet Yeung
Name: Janet Yeung
Title: Authorized Signatory

MHR INSTITUTIONAL ADVISORS II LLC

By: /s/ Janet Yeung
Name: Janet Yeung
Title: Authorized Signatory

MHR FUND MANAGEMENT LLC

By: /s/ Janet Yeung
Name: Janet Yeung
Title: Authorized Signatory

MARK H. RACHESKY, M.D.

/s/ Janet Yeung, Attorney in Fact