

EMISPHERE TECHNOLOGIES INC

Form SC 13D/A

October 09, 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. 17)\*

**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)**

**October 4, 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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CUSIP No.: **291345106** **13D** **Page 2 of 12 Pages**

**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

SHARES **8** 10,515,137 SHARED VOTING POWER

BENEFICIALLY

OWNED BY **9** 0 SOLE DISPOSITIVE POWER  
EACH

REPORTING

PERSON **10** 10,515,137 SHARED DISPOSITIVE POWER  
WITH

0

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11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

10,515,137

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)

16.2%

14 TYPE OF REPORTING PERSON (See Instructions)

PN

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CUSIP No.: **291345106** **13D** **Page 3 of 12 Pages**

**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 **8** 11,947,381 SHARED VOTING POWER

BENEFICIALLY

OWNED BY **9** 0 SOLE DISPOSITIVE POWER  
EACH

REPORTING

PERSON **10** 11,947,381 SHARED DISPOSITIVE POWER  
WITH

0

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11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

11,947,381

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)

18.2%

14 TYPE OF REPORTING PERSON (See Instructions)

OO

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CUSIP No.: **291345106** **13D** **Page 4 of 12 Pages**

**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)

**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 **8** 7,500,315 SHARED VOTING POWER

BENEFICIALLY

OWNED BY **9** 0 SOLE DISPOSITIVE POWER  
EACH

REPORTING

PERSON **10** 7,500,315 SHARED DISPOSITIVE POWER  
WITH

0

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11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

7,500,315

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)

11.6%

14 TYPE OF REPORTING PERSON (See Instructions)

PN



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CUSIP No.: **291345106** **13D** **Page 5 of 12 Pages**

**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

SHARES **8** 18,895,579 SHARED VOTING POWER

BENEFICIALLY

OWNED BY **9** 0 SOLE DISPOSITIVE POWER  
EACH

REPORTING

PERSON **10** 18,895,579 SHARED DISPOSITIVE POWER  
WITH

0

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11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

18,895,579

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)

26.5%

14 TYPE OF REPORTING PERSON (See Instructions)

PN

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CUSIP No.: **291345106** **13D** **Page 6 of 12 Pages**

**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

SHARES **8** 26,395,894 SHARED VOTING POWER

BENEFICIALLY

OWNED BY **9** 0 SOLE DISPOSITIVE POWER  
EACH

REPORTING

PERSON **10** 26,395,894 SHARED DISPOSITIVE POWER

WITH

0

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11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

26,395,894

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)

34.9%

14 TYPE OF REPORTING PERSON (See Instructions)

OO

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CUSIP No.: **291345106** **13D** **Page 7 of 12 Pages**

**1** NAME OF REPORTING PERSONS

MHR FUND MANAGEMENT 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 **8** 38,343,275 SHARED VOTING POWER

BENEFICIALLY

OWNED BY **9** 0 SOLE DISPOSITIVE POWER  
EACH

REPORTING

PERSON **10** 38,343,275 SHARED DISPOSITIVE POWER  
WITH

0

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11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

38,343,275

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)

47.6%

14 TYPE OF REPORTING PERSON (See Instructions)

OO

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CUSIP No.: **291345106** **13D** **Page 8 of 12 Pages**

**1** NAME OF REPORTING PERSONS

MHR HOLDINGS 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 **8** 38,343,275 SHARED VOTING POWER

BENEFICIALLY

OWNED BY **9** 0 SOLE DISPOSITIVE POWER  
EACH

REPORTING

PERSON **10** 38,343,275 SHARED DISPOSITIVE POWER

WITH

0

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11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

38,343,275

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)

47.6%

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

SHARES **8** 38,557,573 SHARED VOTING POWER

BENEFICIALLY

OWNED BY **9** 0 SOLE DISPOSITIVE POWER  
EACH

REPORTING

PERSON **10** 38,557,573 SHARED DISPOSITIVE POWER  
WITH

0

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11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

38,557,573

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)

47.7%

14 TYPE OF REPORTING PERSON (See Instructions)

IN; HC

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Item 4. Purpose of Transaction.  
SIGNATURES

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This statement on Schedule 13D (this Statement ) further amends and supplements, as Amendment No. 17, 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 ), Amendment No. 14, filed on July 8, 2011 ( Amendment No. 14 ), Amendment No. 15, filed on June 5, 2012 ( Amendment No. 15 ) and Amendment No. 16, filed on September 27, 2012 ( Amendment No. 16 ), 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, Amendment No. 13, Amendment No. 14 and Amendment No. 15, 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. 16.

**Item 4. Purpose of Transaction**

Item 4 is hereby amended to add the following:

On October 4, 2012, the Reporting Persons notified the Issuer that as a result of the Issuer's failure to pay the amounts due and payable under the Convertible Notes on the maturity date, as of September 27, 2012, a default interest rate of 13% became applicable in respect of the Convertible Notes. As previously reported in Amendment No. 16, the Reporting Persons have notified the Issuer that they are prepared to enter into discussions with the Issuer regarding proposals relating to the Matured Notes and that they reserve all rights and remedies in connection with the Matured Notes. There can be no assurances as to the outcome of such discussions.

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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: October 9, 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

MHR HOLDINGS LLC

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

MARK H. RACHESKY, M.D.

/s/ Janet Yeung, Attorney in Fact