

LEAP WIRELESS INTERNATIONAL INC
Form SC 13D/A
June 01, 2009

**SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

SCHEDULE 13D

[Rule 13d-102]

**INFORMATION TO BE INCLUDED IN STATEMENTS FILED
PURSUANT TO § 240.13d-1(a) AND AMENDMENTS
THERE TO FILED PURSUANT TO § 240.13d-2(a)
(Amendment No. 6)***

Leap Wireless International, Inc.

(Name of Issuer)

Common Stock, Par Value \$.0001 Per Share

(Title of Class of Securities)

521863308

(CUSIP Number)

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)

May 28, 2009

(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 o.

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.

(Continued on following pages)

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* 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 (the 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).

CUSIP No. 521863308

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NAMES OF REPORTING PERSONS

1

MHR INSTITUTIONAL PARTNERS IIA LP

CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS)

2

(a)

(b)

SEC USE ONLY

3

SOURCE OF FUNDS (SEE INSTRUCTIONS)

4

N/A

CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e)

5

CITIZENSHIP OR PLACE OF ORGANIZATION

6

Delaware

SOLE VOTING POWER

7

NUMBER OF 8,415,428

SHARED VOTING POWER

SHARES BENEFICIALLY OWNED BY 8

0

SOLE DISPOSITIVE POWER

EACH REPORTING PERSON 9

8,415,428

WITH SHARED DISPOSITIVE POWER

10

0

AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

11

8,415,428

CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS)

12

o

PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

13

12.0%

TYPE OF REPORTING PERSON (SEE INSTRUCTIONS)

14

PN

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NAMES OF REPORTING PERSONS

1

MHR INSTITUTIONAL ADVISORS II LLC

CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS)

2

(a)

(b)

SEC USE ONLY

3

SOURCE OF FUNDS (SEE INSTRUCTIONS)

4

N/A

CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e)

5

CITIZENSHIP OR PLACE OF ORGANIZATION

6

Delaware

SOLE VOTING POWER

7

NUMBER OF 11,755,806

SHARED VOTING POWER

SHARES BENEFICIALLY OWNED BY 8

0

SOLE DISPOSITIVE POWER

EACH REPORTING PERSON 9

11,755,806

WITH SHARED DISPOSITIVE POWER
10
0

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON
11,755,806

12 CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS)
o

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)
16.7%

14 TYPE OF REPORTING PERSON (SEE INSTRUCTIONS)
OO

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NAMES OF REPORTING PERSONS

1

MHR FUND MANAGEMENT LLC

CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS)

2

(a)

(b)

SEC USE ONLY

3

SOURCE OF FUNDS (SEE INSTRUCTIONS)

4

N/A

CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e)

5

CITIZENSHIP OR PLACE OF ORGANIZATION

6

Delaware

SOLE VOTING POWER

7

NUMBER OF 15,537,869

SHARED VOTING POWER

SHARES BENEFICIALLY OWNED BY 8

0

SOLE DISPOSITIVE POWER

EACH REPORTING PERSON 9

15,537,869

WITH SHARED DISPOSITIVE POWER

10

0

AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

11

15,537,869

CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS)

12

o

PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

13

22.1%

TYPE OF REPORTING PERSON (SEE INSTRUCTIONS)

14

OO

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NAMES OF REPORTING PERSONS

1

MARK H. RACHESKY, M.D.

CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS)

2

(a)

(b)

SEC USE ONLY

3

SOURCE OF FUNDS (SEE INSTRUCTIONS)

4

N/A

CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e)

5

CITIZENSHIP OR PLACE OF ORGANIZATION

6

United States of America

SOLE VOTING POWER

7

NUMBER OF 15,585,846

SHARED VOTING POWER

SHARES BENEFICIALLY OWNED BY 8

0

SOLE DISPOSITIVE POWER

EACH REPORTING PERSON 9

15,585,846

WITH SHARED DISPOSITIVE POWER

10

0

AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

11

15,585,846

CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS)

12

o

PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

13

22.2%

TYPE OF REPORTING PERSON (SEE INSTRUCTIONS)

14

IN; HC

This statement on Schedule 13D (this Statement) further amends and supplements, as Amendment No. 6, the Schedule 13D filed on August 26, 2004 (the Original Schedule 13D), which was amended and restated on December 19, 2007 by Amendment No. 1 to the Original Schedule 13D (Amendment No. 1), on December 20, 2007 by Amendment No. 2 to the Original 13D (Amendment No. 2), on December 21, 2007 by Amendment No. 3 to the Original Schedule 13D (Amendment No. 3), on December 24, 2007 by Amendment No. 4 to the Original 13D (Amendment No. 4) and on January 31, 2008 by Amendment No. 5 to the Original 13D (Amendment No. 5) and, together with the Original Schedule 13D, Amendment No. 1, Amendment No. 2, Amendment No. 3 and Amendment No. 4, the Schedule 13D) and relates to the shares of common stock, par value \$0.0001 per share (the Common Stock), of Leap Wireless International, Inc. (the Issuer). Defined terms used in this Statement but not defined herein shall have the respective meanings given to such terms in Amendment No. 5.

Item 4. Purpose of Transaction

Item 4 is hereby amended to add the following:

Registration Rights Agreement Waiver

In connection with the Issuer's proposed sale of Common Stock pursuant to that certain registration statement on Form S-3 filed with the SEC on March 4, 2009 (the Offering), the Issuer, Institutional Partners II and Institutional Partners IIA entered into that certain agreement (the Registration Rights Agreement Waiver) on May 28, 2009, whereby Institutional Partners II and Institutional Partners IIA agreed to waive certain rights that they have pursuant to the Registration Rights Agreement. In consideration for the waiver of such rights, the Issuer has agreed to amend the Registration Rights Agreement to, among other things, include all shares of Common Stock held by any of the Reporting Persons or any of their affiliates now or at any time in the future and file a post-effective amendment to the shelf registration statement no later than December 2, 2009 and from time to time thereafter upon request to register for resale additional shares of Common Stock that may be held by the Reporting Persons or any of their affiliates from time to time.

Lock-Up Agreements

In connection with the Offering, each of Master Account, Capital Partners (100), Institutional Partners II, Institutional Partners IIA and Institutional Partners III agreed with Goldman, Sachs & Co., as the underwriter for the Offering (the Underwriter), pursuant to that certain letter agreement, dated May 28, 2009 (the MHR Lock-Up Agreement), that, subject to the terms of the MHR Lock-Up Agreement, they will not offer or sell shares of Common Stock held by them for a period of 90 days (as may be extended under certain conditions) from the date that the final prospectus is delivered in connection with the Offering (the Lock-Up Period).

Dr. Rachesky has also agreed with the Underwriter pursuant to that certain letter agreement, dated May 28, 2009 (the Rachesky Lock-Up Agreement), that he will not offer or sell shares of Common Stock held by him during the Lock-Up Period.

The foregoing discussions of the Registration Rights Agreement Waiver, MHR Lock-Up Agreement and Rachesky Lock-Up Agreement are qualified in their entirety by reference to the full text of the Registration Rights Agreement Waiver, MHR Lock-Up Agreement and Rachesky Lock-Up Agreement, respectively, which are attached as Exhibits 1 through 3 of Item 7 to this Statement and incorporated into this Item 4 by reference.

Item 5. Interest in Securities of the Issuer

Item 5 is hereby amended and restated in its entirety as follows:

The percentages set forth in this Statement are calculated based on information contained in the Issuer's Form 10-Q for the quarterly period ended March 31, 2009, which disclosed that there were 70,305,601 shares of Common Stock outstanding as of May 1, 2009.

(a) (i) Master Account may be deemed the beneficial owner of 353,420 shares of Common Stock held for its own account (approximately 0.5% of the total number of shares of Common Stock outstanding, calculated in accordance with Rule 13d-3(d)(1)(i) under the Act).

(ii) Capital Partners (100) may be deemed the beneficial owner of 42,514 shares of Common Stock held for its own account (approximately 0.06% of the total number of shares of Common Stock outstanding, calculated in accordance with Rule 13d-3(d)(1)(i) under the Act).

(iii) Advisors may be deemed the beneficial owner of 395,934 shares of Common Stock (approximately 0.6% of the total number of shares of Common Stock outstanding, calculated in accordance with Rule 13d-3(d)(1)(i) under the Act). This number consists of (A) 353,420 shares of Common Stock held for the account of Master Account and (B) 42,514 shares of Common Stock held for the account of Capital Partners (100).

(iv) Institutional Partners II may be deemed the beneficial owner of 3,340,378 shares of Common Stock held for its own account (approximately 4.8% of the total number of shares of Common Stock outstanding, calculated in accordance with Rule 13d-3(d)(1)(i) under the Act).

(v) Institutional Partners IIA may be deemed the beneficial owner of 8,415,428 shares of Common Stock held for its own account (approximately 12.0% of the total number of shares of Common Stock outstanding calculated in accordance with Rule 13d-3(d)(1)(i) under the Act).

(vi) Institutional Advisors II may be deemed the beneficial owner of 11,755,806 shares of Common Stock (approximately 16.7% of the total number of shares of Common Stock outstanding calculated in accordance with Rule 13d-3(d)(1)(i) under the Act). This number consists of (A) 3,340,378 shares of Common Stock held for the account of Institutional Partners II and (B) 8,415,428 shares of Common Stock held for the account of Institutional Partners IIA.

(vii) Institutional Partners III may be deemed the beneficial owner of 3,386,129 shares of Common Stock held for its own account (approximately 4.8% of the total number of shares of Common Stock outstanding calculated in accordance with Rule 13d-3(d)(1)(i) under the Act).

(viii) Institutional Advisors III may be deemed the beneficial owner of 3,386,129 shares of Common Stock (approximately 4.8% of the total number of shares of Common Stock outstanding calculated in accordance with Rule 13d-3(d)(1)(i) under the Act). This number consists of 3,386,129 shares of Common Stock held for the account of Institutional Partners III.

(ix) Fund Management may be deemed the beneficial owner of 15,537,869 shares of Common Stock (approximately 22.1% of the total number of shares of Common Stock outstanding, calculated in accordance with Rule 13d-3(d)(1)(i) under the Act). This number consists of all of the shares of Common Stock 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, Institutional Partners IIA and Institutional Partners III.

(x) Dr. Rachesky may be deemed the beneficial owner of 15,585,846 shares of Common Stock (approximately 22.2% of the total number of shares of Common Stock outstanding, calculated in accordance

with Rule 13d-3(d)(1)(i) under the Act). This number consists of (A) all of the shares of Common Stock otherwise described in this Item 5(a) by virtue of Dr. Rachesky's position as the managing member of each of Fund Management, Advisors, Institutional Advisors II and Institutional Advisors III, (B) 7,777 shares of restricted stock, and (C) 40,200 shares of Common Stock that can be obtained upon the exercise of certain non-qualified stock options.

(b) (i) Master Account may be deemed to have (x) the sole power to direct the disposition of 353,420 shares of Common Stock which may be deemed to be beneficially owned by Master Account as described above and (y) the sole power to direct the voting of 353,420 shares of Common Stock 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 42,514 shares of Common Stock 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 42,514 shares of Common Stock 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 395,934 shares of Common Stock which may be deemed to be beneficially owned by Advisors as described above and (y) the sole power to direct the voting of 395,934 shares of Common Stock 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 3,340,378 shares of Common Stock 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 3,340,378 shares of Common Stock 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 8,415,428 shares of Common Stock 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 8,415,428 shares of Common Stock 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 11,755,806 shares of Common Stock 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 11,755,806 shares of Common Stock which may be deemed to be beneficially owned by Institutional Advisors II as described above.

(vii) Institutional Partners III may be deemed to have (x) the sole power to direct the disposition of 3,386,129 shares of Common Stock which may be deemed to be beneficially owned by Institutional Partners III as described above and (y) the sole power to direct the voting of 3,386,129 shares of Common Stock which may be deemed to be beneficially owned by Institutional Partners III as described above.

(viii) Institutional Advisors III may be deemed to have (x) the sole power to direct the disposition of 3,386,129 shares of Common Stock which may be deemed to be beneficially owned by

Institutional Advisors III as described above and (y) the sole power to direct the voting of 3,386,129 shares of Common Stock which may be deemed to be beneficially owned by Institutional Advisors III as described above.

(ix) Fund Management may be deemed to have (x) the sole power to direct the disposition of the 15,537,869 shares of Common Stock which may be deemed to be beneficially owned by Fund Management as described above and (y) the sole power to direct the voting of 15,537,869 shares of Common Stock which may be deemed to be beneficially owned by Fund Management as described above.

(x) Dr. Rachesky may be deemed to have (x) the sole power to direct the disposition of the 15,585,846 shares of Common Stock which may be deemed to be beneficially owned by Dr. Rachesky as described above and (y) the sole power to direct the voting of 15,585,846 shares of Common Stock which may be deemed to be beneficially owned by Dr. Rachesky as described above.

(c) On May 22, 2009, the Issuer granted Dr. Rachesky 2,563 shares of restricted stock.

(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.

(v) The partners of Institutional Partners III, including Institutional Advisors III, 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 III in accordance with their partnership interests in Institutional Partners III.

(e) Not applicable.

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

The information set forth in Item 4 above and Exhibits 1 through 3 of Item 7 to this Statement are incorporated into this Item 6 by reference.

Item 7. Material to be Filed as Exhibits.

- 1 Registration Rights Agreement Waiver, dated as of May 28, 2009, executed by Institutional Partners II, Institutional Partners IIA and the Issuer.
 - 2 Lock-Up Agreement, dated as of May 28, 2009, executed by each of Master Account, Capital Partners (100), Institutional Partners II, Institutional Partners IIA and Institutional Partners III.
 - 3 Lock-Up Agreement, dated as of May 28, 2009, executed by Dr. Rachesky.
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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 1, 2009

MHR INSTITUTIONAL PARTNERS IIA LP

By: MHR Institutional Advisors II LLC,
its General Partner

By: /s/ Hal Goldstein

Name: Hal Goldstein
Title: Vice President

MHR INSTITUTIONAL ADVISORS II LLC

By: /s/ Hal Goldstein

Name: Hal Goldstein
Title: Vice President

MHR FUND MANAGEMENT LLC

By: /s/ Hal Goldstein

Name: Hal Goldstein
Title: Managing Principal

MARK H. RACHESKY, M.D.

By: /s/ Hal Goldstein, Attorney in Fact

Exhibit Index

Exhibit No.	Description
1	Registration Rights Agreement Waiver, dated as of May 28, 2009, executed by Institutional Partners II, Institutional Partners IIA and the Issuer.
2	Lock-Up Agreement, dated as of May 28, 2009, executed by each of Master Account, Capital Partners (100), Institutional Partners II, Institutional Partners IIA and Institutional Partners III.
3	Lock-Up Agreement, dated as of May 28, 2009, executed by Dr. Rachesky.