

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CUBIST PHARMACEUTICALS, INC.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 12-367 (GMS)
)	(CONSOLIDATED)
HOSPIRA, INC.,)	
)	
Defendant.)	

**JOINT CLAIM CONSTRUCTION CHARTS FOR THE PATENTS BEING
ASSERTED BY CUBIST PHARMACEUTICALS, INC.**

The parties have met and conferred, and present the following Joint Claim Construction Charts for the patents being asserted by Cubist Pharmaceuticals, Inc.

I. Stipulated Constructions. During the meet and confer process, the parties agreed to the claim construction for twelve claim terms from U.S. Patent Nos. 6,468,967, 6,852,689, RE39,071, 8,129,342, and 8,058,238 as set forth in Exhibit A. The parties jointly and respectfully submit that, if the Court deems it appropriate, the Court include these agreed-upon claim constructions in the ultimate claim construction order. In the alternative, the parties agree that these agreed-upon constructions are binding between the parties.

II. Claim Terms Requiring Construction By The Court. The parties' Joint Claim Construction Charts for U.S. Patent Nos. 6,468,967, 6,852,689, RE39,071, 8,129,342, and 8,058,238 are attached as Exhibits B through D. Exhibit B summarizes the disputed claim terms and the parties' proposed constructions for the five patents. Exhibit C lists the disputed claim term from U.S. Patent Nos. 6,468,967, 6,852,689, 8,129,342, and 8,058,238, and Exhibit D lists the disputed claim term from U.S. Patent No. RE39,071, as well as the parties' proposed constructions and the evidence the parties rely upon in support of their proposed constructions for the patents.

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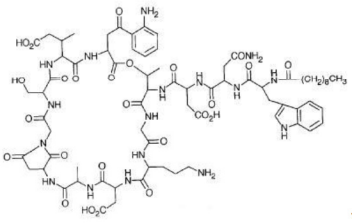
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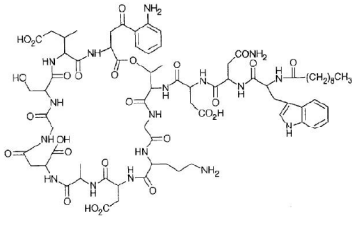
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Exhibit A

List of Agreed Upon Claim Term Constructions for U.S. Patent Nos. 6,468,967, 6,852,689, RE39,071, 8,129,342, and 8,058,238

Claim Term	Agreed-Upon Construction
<u>U.S. Patent Nos. 8,058,238 and 8,129,342</u>	
“daptomycin that is substantially free of [another compound]” (Claims 3-5, 7-9, 50, 55, 56, 58, 61, 62, 64, 87, 88, 90, 165-175 of the ‘238 patent) (Claims 10, 11, 16 of the ‘342 patent)	“the other compound is present in an amount that is no more than 1% of the amount of the daptomycin preparation”
“daptomycin that is essentially free of [another compound]” (Claims 4-5, 9, 50, 56, 59, 62, 65, 88, 91, 165-175, 190 of the ‘238 patent) (Claims 3, 32, 42 of the ‘342 patent)	“the other compound is present in an amount that is no more than 0.5% of the amount of the daptomycin preparation”
“anhydro-daptomycin” (Claims 3-5, 7, 50, 55, 56, 61, 62, 87, 88, 165-175, 190 of the ‘238 patent) (Claims 1, 3-16, 18, 21-23, 32, 33, 41, 42, 53 of the ‘342 patent)	“The daptomycin derivative in which the α -aspartyl group of daptomycin is transepeptidated to an anhydro-succinimido group, <i>i.e.</i> , 

Claim Term	Agreed-Upon Construction
<p>“β-isomer of daptomycin”</p> <p>(Claims 3-5, 7, 50, 55, 56, 61, 62, 87, 88, 165-175 of the ‘238 patent)</p> <p>(Claims 1, 3-16, 21-23, 32, 33, 41, 42, 53 of the ‘342 patent)</p>	<p>“The daptomycin derivative that contains a β-aspartyl group instead of an α-aspartyl group, <i>i.e.</i>,</p>  <p>”</p>
<p>“micelle” / “daptomycin micelle”</p> <p>(Claims 21-35, 37-40, 42-45, 99, 104, 106, 107, 108, 131, 138, 143, 145, 146, 147, 165-174, 176-180, 184, 185 of the ‘238 patent)</p> <p>(Claims 22-23, 30-49 of the ‘342 patent)</p>	<p>“aggregates of amphipathic molecules” / “aggregates comprising daptomycin”</p>
<p>“aggregate” / “daptomycin aggregate”</p> <p>(Claims 3-5, 7-9, 49-52, 55, 56, 58, 59, 61, 62, 64, 65, 85, 87, 88, 90-109, 113-123, 125-148, 151-161, 164-175, 179, 183-187, 189, 190 of the ‘238 patent)</p> <p>(Claims 1, 3-23, 25-29, 50-54 of the ‘342 patent)</p>	<p>“associated molecules including but not limited to micelles” / “associated molecules comprising daptomycin including but not limited to daptomycin micelles”</p>
<p>“conditions effective to form daptomycin [micelles/aggregates]”</p> <p>(Claims 3-5, 7-9, 37-40, 42-43, 93-107, 125-146, 166-174,</p>	<p>“conditions that result in the formation of daptomycin micelles/aggregates, including but not limited to one or more of the daptomycin concentration, temperature, salt concentration, and/or pH of a daptomycin solution”</p>

Claim Term	Agreed-Upon Construction
176-179 of the '238 patent) (Claims 5-6 of the '342 patent)	
"daptomycin purified by a process comprising the steps of:" (Claims 3-5, 7, 166-174 of the '238 patent) (Claims 30-39, 50-54 of the '342 patent)	"daptomycin that has been purified by a process including, but not limited to, the following steps"
"daptomycin that is free of [another compound]" (Claims 50, 165-175 of the '238 patent)	"the other compound is present in an amount that is no more than 0.1% of the amount of the daptomycin preparation"
"essentially pure daptomycin" (Claims 50, 165-175 of the '238 patent)	"at least 98% of a sample is daptomycin"
"purified daptomycin" (Claims 8-9, 49-52, 55, 56, 58, 59, 61, 62, 64, 65, 85, 87, 88, 90-109, 113-123, 125-148, 151-161, 164-180, 183-187, 189, 190 of the '238 patent)	"daptomycin that is substantially pure, essentially pure, or substantially free, essentially free, or free of another compound"
<u>U.S. Patent No. RE 39,071</u>	
"a combination of a compound of formula 1, a compound of formula 2, and a compound of formula 3" (Claims 18, 19, 26, 28 of the '071 patent)	"a compound of formula 1, a compound of formula 2, and a compound of formula 3, present together and totaling 100% by weight of the combination"

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