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Intellectual Property Department Cubist Pharmaceuticals, Inc. 65 Hayden Avenue Lexington, MA 02421			KAM, CHIH MIN	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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DETAILED ACTION

Status of the Claims

1. Claims 1-29, 31-36, 38-44 and 46-52 are pending.

Applicants' amendment filed August 18, 2008 is acknowledged. Claim 1 has been amended, and claims 30, 37, 45 and 53 have been cancelled. Therefore, claims 1-29, 31-36, 38-44 and 46-52 are examined.

Withdrawn Claim Objections

2. The previous objection to claims 2-7, 10, 31-34, 39-42 and 47-50 is withdrawn in view of a new ground of rejection made on these claims.

Withdrawn Claim Rejections - 35 USC § 102

3. The previous rejection of claims 1, 8, 9, 11-30, 37, 38, 45-46 and 53 under 35 U.S.C. 102(e) as being anticipated by Baker *et al.* (US RE39,071 E, reissue of U.S. Patent 5,912,226), is withdrawn in view of applicants' amendment to the claim, and applicant's response at pages 8-9 in the amendment filed August 18, 2008.

New Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 1-5, 8-29, 31-34, 38-42 and 46-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baker *et al.* (US RE39,071 E, reissue of U.S. Patent 5,912,226, filed December 16, 1991).

Baker *et al.* teach an antibacterial composition comprising daptomycin (LY146032) in substantially pure form, which refers to daptomycin that contains less than 2.5% of a combined total of anhydro-daptomycin and beta-isomer of daptomycin (column 8, lines 50-60; Example 4), where daptomycin is purified by a procedure using Diaion HP-20 resin column and HPLC (Examples 1-3, claim 8). Baker *et al.* also teach a pharmaceutical formulation comprising the purified daptomycin (LY146032) with pharmaceutical carriers or excipients can also be prepared (column 9, lines 47-59; claims 9, 38, 46). Although Baker *et al.* do not specifically disclose the daptomycin (LY146032) that is essentially pure (i.e., at least 98% of a sample being daptomycin as defined at page 11, lines 23-26 of the instant specification); that is substantially free of anhydro-daptomycin (no more than 1%; page 11, lines 27-29) and substantially free of β -isomer of daptomycin (no more than 1%); that is essentially free of anhydro-daptomycin (no more than 0.5%; page 12, lines 1-3) and substantially free of β -isomer of daptomycin (no more than 1%); that is free of anhydro-daptomycin (no more than 0.1%; page 12, lines 4-6) and substantially free of β -isomer of daptomycin (no more than 1%), the reference does indicate the daptomycin (LY146032) contains less than 2.5% of a combined total of anhydro-daptomycin and beta-isomer of daptomycin, thus it is obvious that LY146032 is at least 97.5% pure, which encompass the embodiments at least 98% pure (claims 1(a), 2, 31, 39, 47), the embodiments of substantially free of anhydro-daptomycin (no more than 1%) and substantially free of β -isomer of daptomycin (no more than 1%; claims 1(b), 3, 32, 40, 48), the embodiments of essentially free of anhydro-

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daptomycin (no more than 0.5%) and substantially free of β -isomer of daptomycin (no more than 1%; claims 1(c), 4, 33, 41, 49), and the embodiments of free of anhydro-daptomycin (no more than 0.1%) and substantially free of β -isomer of daptomycin (no more than 1%; claims 1(d), 5, 34, 42, 50). It is also obvious that claims 11-29 are not patentable because the product by process claims are limited by and defined by the process, determination of patentability is based on the product itself, and the patentability of a product does not depend on its method of production (see MPEP 2113). In the instant case, the composition comprising daptomycin that is substantially free of anhydro-daptomycin and beta-isomer of daptomycin (less than 2.5% impurity, or at least 97.5% pure) as indicated in the patent is the similar to the claimed composition comprising essentially pure daptomycin (>98% daptomycin), even though the daptomycin of reference is purified by a different process. Baker *et al.* also disclose an antibiotic composition comprised of a combination of a compound of formula 1 (i.e., anhydro-A21978C; column 1, lines 14-21), a compound of formula 2 (isomer of A21978C) and a compound of formula 3 (the parent cyclic peptide of A21978C; LY146032) or pharmaceutically acceptable salts (Reissue:claim 18; claim 10 of instant application).

Claim Objections

5. Claims 6-7, 35-36, 43-44 and 51-52 are objected to because the claims are dependent from a rejected claim.

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