IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CUBIST PHARMACEUTICALS, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 09-189 (GMS)
	)	
TEVA PARENTERAL MEDICINES, INC., TEVA PHARMACEUTICALS USA, INC., and TEVA PHARMACEUTICAL INDUSTRIES LTD.,	)	
	)	
Defendants.	)	

FINAL 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 7 claim terms from U.S. Patent Nos. 6,468,967, 6,852,689, and RE39,071 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; and RE39,071, are attached as Exhibits B through D. Exhibit B summarizes the disputed claim terms and the parties' proposed constructions for the three patents. Exhibit C lists the disputed claim terms from U.S. Patent No. 6,468,967 and U.S. Patent No. 6,852,689, 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 patent.

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Exhibit A

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

Claim Term	Agreed-Upon Construction
U.S. Patent No. 6,468,967	
"administering to a human patient in need thereof" (Claims 3, 4, 5, 16, 17, 42 and 43 of the '967 patent)	"Administering daptomycin to a human patient in need of daptomycin to treat a gram-positive bacterial infection"
"wherein the daptomycin dose is repeatedly administered at a dosage interval of once every 24 hours to once every 48 hours" (Claims 3, 4, 5, 27, and 28 of the '967 patent)	"the daptomycin dose is administered more than once at an interval of once every 24 hours, i.e. daily, to once every 48 hours, i.e. once every other day"
"wherein the daptomycin dose is repeatedly administered at a dosage interval of once every 24 hours" (Claims 16, 17, 34, 35, 42, 43, 44 and 45 of the '967 patent)	"the daptomycin dose is administered more than once at an interval of once every 24 hours, i.e. daily"
"until said bacterial infection is treated or eradicated" (Claims 27, 28, 34, and 35 of the '967 patent)	"until effective to reduce or eliminate bacterial infection"
U.S. Patent No. 6,852,689	
"administering to a human patient in need thereof" (Claims 48, 49, 50, 51 and 52 of the '689 patent)	"Administering daptomycin to a human patient in need of daptomycin to treat a gram-positive bacterial infection"
"wherein the daptomycin dose is repeatedly administered at a dosage interval of once every 48 hours"	"the daptomycin dose is administered more than once at an interval of once every 48 hours, i.e. once every other day"

(Claims 48, 49, 50, 51 and 52 of the ’689 patent)	
U.S. Patent No. RE 39,071	
“effective antibacterial amount” (Claim 20 of the RE‘071 patent)	“amount sufficient to control a bacterial infection”

Exhibit B

Summary of Proposed Claim Constructions for U.S. Patent Nos. 468,967; 6,852,689; and RE39,071

Term No.	Term To Be Construed	Cubist's Proposed Construction	TPM's Proposed Construction
U.S. Patent Nos. 6,468,967 and 6,852,689			
1	"a therapeutically effective amount of daptomycin" (Claims 3, 4, 5, 16, 17, 27, 28, 34, 35, 42, 43, 44 and 45 of the '967 patent) (Claims 48, 49, 50, 51 and 52 of the '689 patent)	"An amount of daptomycin that is efficacious in reducing or eliminating a gram-positive bacterial infection"	Non-limiting as merely statement of intended result of specific dose limitation
2	"at a dosage interval that minimizes skeletal muscle toxicity" (Claims 3, 4, 5, 16, 17, 27, 28, 34, 35, 42, 43, 44 and 45 of the '967 patent) (Claims 48, 49, 50, 51 and 52 of the '689 patent)	"at a dosage interval that reduces skeletal muscle toxicity in comparison to dosing more than once every 24 hours"	Non-limiting as merely statement of intended result of specific dosage interval claimed
U.S. Patent No. RE39,071			
1	"in substantially pure form" (Claim 20)	"wherein the formula 3 compound is LY146032 and the combination contains less than 2.5% of a combined total of the formula 1 compound (*i.e.* anhydro-LY146032) and the formula 2 compound (*i.e.*, isomer-LY146032)"	"wherein the formula 3 compound is LY146032 which contains less than 2.5 percent of a combined total of anhydro-LY146032 and isomer-LY146032"

Exhibit C

Joint Claim Chart for U.S. Patent Nos. 6,468,967 and 6,852,689

Proposed Construction of Disputed Claim Terms with Citations to Supporting Evidence

Term No.	Term To Be Construed	Cubist's Proposed Construction	Intrinsic Evidence Supporting Cubist's Construction	TPM's Proposed Construction	Intrinsic Evidence Supporting TPM's Construction
1	"a therapeutically effective amount of daptomycin" (Claims 3, 4, 5, 16, 17, 27, 28, 34, 35, 42, 43, 44 and 45 of the '967 patent) (Claims 48, 49, 50, 51 and 52 of the '689 patent)	"An amount of daptomycin that is efficacious in reducing or eliminating the gram-positive bacterial infection."	'967 Patent Specification Col. 2, lns. 31-43 Col. 4, lns. 48-63 Col. 5, lns. 34-37 Col. 6, lns. 9-12 Col. 6, lns. 29-30 Col. 6, lns. 31-38 Col. 6, lns. 46-55 Col. 7, lns. 17-24 Col. 14, lns. 24-27 Col. 14, lns. 12-21 Col. 15, lns. 55-61 Col. 16, lns. 42-52 (claims	Non-limiting as merely statement of intended result of specific dose limitation	

Term No.	Term To Be Construed	Cubist's Proposed Construction	Intrinsic Evidence Supporting Cubist's Construction	TPM's Proposed Construction	Intrinsic Evidence Supporting TPM's Construction
			23-25 and 36-40) Figure 3 '689 Patent Specification Col. 2, lns. 33-45 Col. 4, lns. 50-65 Col. 5, lns. 35-38 Col. 6, lns. 11-14 Col. 6, lns. 31-32 Col. 6, lns. 33-40 Col. 6, lns. 48-57 Col. 7, lns. 19-26 Col. 14, lns. 9-19 Col. 14, lns. 22-25 Col. 15, lns. 52-57 Col. 16, lns. 59-65 (claims 24-26 and 55-57)		

Term No.	Term To Be Construed	Cubist's Proposed Construction	Intrinsic Evidence Supporting Cubist's Construction	TPM's Proposed Construction	Intrinsic Evidence Supporting TPM's Construction
			Figure 3 '967 Patent File History 09/11/00 Response to Office Action, pp. 16-20 9/14/00 Declaration of Frank Tally, p. 3 12/04/00 Office Action, p. 3-6 06/04/01 Response to Office Action, pp. 6-7 '689 Patent File History 11/20/2002 Response to Office Action, pp. 13-14 09/20/04 Notice of Allowance, p. 3		
2	"at a dosage interval that minimizes skeletal muscle toxicity" (Claims 3, 4, 5, 16, 17, 27, 28, 34, 35, 42,	"at a dosage interval that reduces skeletal muscle toxicity in comparison to dosing more than once every 24 hours."	'967 Patent Abstract '967 Patent Specification Col. 1, lns. 63-65 Col. 1, ln. 67 – Col. 2, ln.	Non-limiting as merely statement of intended result of specific dosage interval claimed	'967 Patent Specification Col. 4, lns. 46-48 Col. 4, ln. 65-Col. 5, ln. 3

Term No.	Term To Be Construed	Cubist's Proposed Construction	Intrinsic Evidence Supporting Cubist's Construction	TPM's Proposed Construction	Intrinsic Evidence Supporting TPM's Construction
	43, 44 and 45 of the '967 patent) (Claims 48, 49, 50, 51 and 52 of the '689 patent)		20 Col. 2, lns. 27-30 Col. 2, lns. 40-43 Col. 3, lns. 3-22 Col. 3, lns. 24-27 Col. 3, lns. 36-41 Col. 3, ln. 63 – Col. 4, ln. 5 Col. 4, lns. 22-33 Col. 4, lns. 39-46 Col. 4, lns. 46-48 Col. 4, lns. 60-64 Col. 4, ln. 64 – Col. 5, ln. 13 Col. 5, lns. 17-26 Col. 5, lns. 40-50		Col. 5, lns. 14-26 Col. 12, ln. 62 – Col. 13. ln. 62 '689 Patent Specification Col. 4, lns. 48-50 Col. 4, ln. 66-Col. 5, ln. 5 Col. 5, lns. 16-28 Col. 12, ln. 63 – Col. 13. ln. 58

Term No.	Term To Be Construed	Cubist's Proposed Construction	Intrinsic Evidence Supporting Cubist's Construction	TPM's Proposed Construction	Intrinsic Evidence Supporting TPM's Construction
			Col. 6, lns. 46-55 Col. 7, lns. 17-23 Col. 9, lns. 28-52 Col. 10, lns. 17-52 Col. 10, lns. 53-67 Col. 11, lns. 26-32 Col. 11, lns. 61-67 Col. 12, lns. 1-15 Col. 12, lns. 16-30 Col. 13, lns. 8-21 Col. 14, lns. 24-27 Figures 1A, 1B, 3 Tables 1-5 '689 Patent Abstract '689 Patent Specification Col. 1, lns. 65-67		

Term No.	Term To Be Construed	Cubist's Proposed Construction	Intrinsic Evidence Supporting Cubist's Construction	TPM's Proposed Construction	Intrinsic Evidence Supporting TPM's Construction
			Col. 2, lns. 2-22 Col. 2, lns. 29-32 Col. 2, lns. 42-45 Col. 3, lns. 5-25 Col. 3, lns. 27-29 Col. 3, lns. 38-43 Col. 3, ln. 65 – Col. 4, ln. 7 Col. 4, lns. 23-38 Col. 4, lns. 41-48 Col. 4, lns. 48-50 Col. 4, lns. 62-67 Col. 4, ln. 67-Col. 5. ln. 15 Col. 5, lns. 19-28 Col. 5, lns. 42-52 Col. 6, lns. 48-57		

Term No.	Term To Be Construed	Cubist's Proposed Construction	Intrinsic Evidence Supporting Cubist's Construction	TPM's Proposed Construction	Intrinsic Evidence Supporting TPM's Construction
			Col. 7, lns. 19-25 Col. 9, lns. 37-62 Col. 10, lns. 20-27 Col. 10, lns. 20-57 Col. 10, ln. 57 – Col. 11, ln. 4 Col. 11, lns. 29-35 Col. 11, lns. 61-67 Col. 12, lns. 1-15 Col. 12, lns. 16-30 Col. 13, lns. 8-18 Col. 14, lns. 22-25 Figures 1A, 1B, 3 Tables 1-5 '967 Patent File History 4/11/00 Office Action, p. 6		

Term No.	Term To Be Construed	Cubist's Proposed Construction	Intrinsic Evidence Supporting Cubist's Construction	TPM's Proposed Construction	Intrinsic Evidence Supporting TPM's Construction
			9/11/00 Response to Office Action, pp. 9-20 9/14/00 Declaration of Frank Tally, ¶¶ 3-10 12/4/00 Office Action, p. 1 5/1/01 Interview Summary 6/4/01 Response to Office Action, pp. 6-11 8/8/01 Notice of Allowance '689 Patent File History 11/20/02 Response to Office Action, pp. 7-10, 12-13, 16-17 5/21/02 Office Action, pp. 4, 7, 9		

Exhibit D

Joint Claim Chart for U.S. Patent Nos. RE39,071

Proposed Construction of Disputed Claim Term with Citations to Supporting Evidence

Term No.	Term To Be Construed	Cubist's Proposed Construction	Intrinsic Evidence Supporting Cubist's Construction	TPM's Proposed Construction	Intrinsic Evidence Supporting TPM's Construction
1	"in substantially pure form" (Claim 20)	"wherein the formula 3 compound is LY146032 and the combination contains less than 2.5% of a combined total of the formula 1 compound (*i.e.* anhydro-LY146032) and the formula 2 compound (*i.e.* isomer-LY146032)"	RE'071 Patent Specification Col. 7, lns. 62-64 Col. 7, lns. 65-66 Col. 8, lns. 7-15 Col. 8, lns. 55-57 RE'071 Patent File History 12/21/00 Response to Office Action, pp. 17-18, 21, fn. 4-5	"wherein the formula 3 compound is LY146032 which contains less than 2.5 percent of a combined total of anhydro-LY146032 and isomer-LY146032"	RE'071 Patent Specification Col. 7, lns 1-60 Col. 8, lns. 7-15 Col. 8, lines 55-57. RE '071 Patent File History 12/21/00 Response to Office Action, p. 12 7/3/02 Amendment & Response to Office Action, p. 15 U.S. Patent 5,912,226 Specification Col. 8, lns. 58-60