

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

TEVA PHARMACEUTICALS
INTERNATIONAL GMBH and
TEVA PHARMACEUTICALS
USA, INC.,

Plaintiffs,

v.

ELI LILLY AND COMPANY,
Defendant.

Civil Action No.
1:18-cv-12029-ADB



**FILED UNDER SEAL
LEAVE TO FILE GRANTED
05/06/2022 (ECF NO. 340)**

**PLAINTIFFS' CORRECTED OPPOSITION TO DEFENDANT'S MOTION FOR
PARTIAL SUMMARY JUDGMENT OF NO WILLFUL INFRINGEMENT**



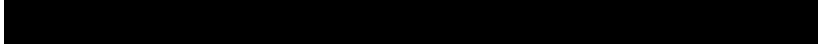
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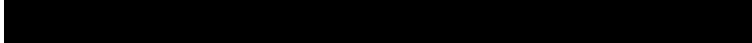
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Other Authorities

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