

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

BAYCHAR, INC., and)	
BAYCHAR HOLDINGS, LLC,)	
)	
Plaintiffs,)	
)	Case No. CV-04-136-B-W
v-)	
)	
SALOMON/NORTH AMERICA, INC.)	
)	<i>JURY TRIAL DEMANDED</i>
Defendant.)	
)	

FIRST AMENDED COMPLAINT AND JURY DEMAND

Plaintiffs Baychar, Inc., and Baychar Holdings LLC (collectively the "Plaintiffs") bring this action to enforce rights under U.S. Patent No. 6,048,810 relating to Baychar's invention of three layer composites for hiking boots, in-line skates, and sporting goods apparel, among other applications.

JURISDICTION AND VENUE

1. The action for patent infringement is brought under the patent laws of the United States, including 35 U.S.C. §§ 271 et seq.
2. This Court has jurisdiction based on 28 U.S.C. §§ 1338 and 1332.
3. Venue is proper in this Court pursuant to 28 U.S.C. §1400(b) and 28 U.S.C. §§1391(c)and(d).

PARTIES

4. Plaintiff Baychar, Inc. ("Baychar, Inc.") is a corporation organized under the laws of Maine with a principal place of business at 135 Maple Avenue, Farmington, Maine.
5. Plaintiff Baychar Holdings, LLC ("Baychar Holdings") is a corporation organized

under the laws of Maine with a principal place of business at 135 Maple Avenue, Farmington, Maine.

6. Defendant Salomon/North America, Inc. is an Oregon corporation organized under the laws of Delaware with its principal place of business at Beaverton, Oregon.

7. On April 11, 2000, the U.S. Government issued Patent No. 6,048,810 (the '810 Patent) to an individual named Baychar (“Baychar”). Claim 8 of the '810 Patent claimed the rights to the three-layered composite of moisture vapor transfer material, (“MVT”) foam, non-woven, where the foam was treated to have reversible enhanced thermal properties. The '810 Patent taught that the foam can be treated by, for example, embedding phase change materials (“PCMs”) in the foam, or alternatively, inserting a membrane with PCMs between the MVT material and the foam. A true and accurate copy of the '810 Patent is attached as Exhibit A.

8. Three layer composites which infringe Claim 8 of the ‘810 Patent were manufactured and sold by third parties under the trade names "Schoeller Interactive with ComforTemp" or "Schoeller-ComforTemp" (the "Schoeller-ComforTemp Three-Layered Composites"), and “Outlast” (the “Outlast Three-Layered Composites”). The Schoeller-Comfortemp Three-Layered Composites and the Outlast Three-Layered Composites are three-layered composites of MVT material, foam, and non-woven, where the composite has been given reversible enhanced thermal properties through use of PCMs in the foam layer.

9. In the alternative, upon information and belief, two layer composites which, when combined with a third layer infringe Claim 8 of the ‘810 Patent, were manufactured and sold by third parties under the trade names “ComforTemp,” “ComforTemp DCC,” "Schoeller Interactive with ComforTemp" or "Schoeller-ComforTemp" (the "ComforTemp Two-Layered

Composites"), and "Outlast" (the "Outlast Two-Layered Composites"). The Comfortemp Two-Layered Composites and the Outlast Two-Layered Composites are two-layered composites of MVT material and foam or foam and non-woven, where the composite has been given reversible enhanced thermal properties through treatment of the foam layer with PCMs.

10. By assignment from Baychar, Baychar Holdings, Inc. is the owner of all right, title and interest in the '810 Patent. In addition, Baychar Inc., holds an exclusive license to practice the inventions disclosed in the '810 Patent.

Count I
Patent Infringement by Salomon/North America, Inc.

11. The plaintiffs repeat and incorporate by reference the averments set forth in paragraphs 1 through 11 above.

12. The defendant Salomon/North America, Inc., either directly or through either or both of its subsidiaries Arc'Teryx and Bonfire, has manufactured, offered for sale, and sold in the United States, including in this judicial district, outerwear incorporating three-layered composites of MVT material, foam, and non-woven, where the composite has been given reversible enhanced thermal properties through treatment of the foam layer with PCMs.

13. The Defendant Salomon/North America, either directly or through either or both of its subsidiaries Arc'Teryx and Bonfire, has manufactured, offered for sale, and/or sold in the United States, including in this judicial district, outerwear incorporating the Outlast Three-Layer Composites and/or the Schoeller-ComforTemp Three-Layered Composites, and/or by combining a third layer with the ComforTemp Two-Layered Composites and/or the Outlast Two-Layered Composites.

14. The Schoeller-ComforTemp Three-Layered Composites and the Outlast Three-

Layered Composites directly infringe claim 8 of the '810 Patent.

15. The ComforTemp Two-Layered Composites and the Outlast Two-Layered Composites, when combined with a third layer of MVT material or non-woven, directly infringe claim 8 of the '810 Patent.

16. The Defendant Salomon/North America, Inc., either directly or through either or both of its subsidiaries Arc'Teryx and Bonfire, has infringed the '810 Patent by making, having made, selling, offering for sale, distributing and/or using products incorporating the above-referenced infringing three-layered composites.

PRAYERS FOR RELIEF

1. That this Court enter judgment that the defendant Salomon/North America, Inc. has infringed the '810 Patent;

2. That the Court permanently enjoin the defendant Salomon/North America, Inc., its parent, subsidiaries, affiliates, divisions, officers, agents, servants, employees, directors, partners, representatives and all parties in active concert and/or participation with it from directly or indirectly making, having made, selling, offering for sale, distributing and/or using composites that infringe the '810 Patent;

3. That the Court order the defendant Salomon/North America, Inc. to account for and pay to Plaintiffs all damages caused to Plaintiffs by its infringement of the '810 Patent, in an amount no less than a reasonable royalty for the use made of the invention, together with interest.

4. That the Court increase damages pursuant to 35 U.S.C. § 284.

5. That this Court find this to be an exceptional case under 35 U.S.C. §285 and

award plaintiff its reasonable attorneys' fees and costs.

6. Such other and further relief that this Court deems just and proper.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38, Plaintiffs respectfully demand a trial by jury on all issues that are properly triable to a jury in this action.

Dated: August 17, 2004

/s/ James G. Goggin

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