

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

BAYCHAR, INC. and)	
BAYCHAR HOLDINGS, LLC,)	
)	
Plaintiffs,)	
)	Case No. CV-04-
v-)	
)	
THE BURTON CORPORATION,)	
DECKERS OUTDOOR CORPORATION,)	
NEW BALANCE ATHLETIC SHOE, INC.,)	
and NORDICA USA CORP.)	
)	<i>JURY TRIAL DEMANDED</i>
Defendants.)	
)	

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 The Burton Corporation is a Vermont corporation organized under the laws of Vermont with its principal place of business at Burlington, Vermont.

7. Defendant New Balance Athletic Shoe, Inc. is a Massachusetts corporation organized under the laws of Massachusetts with its principal place of business at Boston, Massachusetts.

8. Defendant Nordica USA Corp. is a New Hampshire corporation organized under the laws of New Hampshire with its principal place of business at West Lebanon, New Hampshire.

9. Defendant Deckers Outdoor Corporation is an Arizona corporation organized under the laws of Delaware with its principal place of business at Goleta, California.

FACTS COMMON TO ALL COUNTS

10. 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.

11. 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.

12. 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.

13. 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 The Burton Corporation

14. The plaintiffs repeat and incorporate by reference the averments set forth in

paragraphs 1 through 13 above.

15. The defendant Burton Corporation has manufactured, offered for sale, and sold in the United States, including in this judicial district, snowboard boots 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.

16. The defendant The Burton Corporation has manufactured, offered for sale, and/or sold in the United States, including in this judicial district, snowboard boots 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.

17. The Schoeller-ComforTemp Three-Layered Composites and the Outlast Three-Layered Composites directly infringe claim 8 of the '810 Patent.

18. 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.

19. The defendant The Burton Corporation 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.

Count II
Patent Infringement by New Balance Athletic Shoe, Inc.

20. The plaintiffs repeat and incorporate by reference the averments set forth in paragraphs 1 through 13 above.

21. The defendant New Balance Athletic Shoe, Inc., either directly or through its subsidiary Dunham, has manufactured, offered for sale, and sold in the United States, including

in this judicial district, hiking boots 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.

22. The defendant New Balance Athletic Shoe, Inc., either directly or through its subsidiary Dunham, has manufactured, offered for sale, and/or sold in the United States, including in this judicial district, hiking boots 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.

23. The Schoeller-ComforTemp Three-Layered Composites and the Outlast Three-Layered Composites directly infringe claim 8 of the '810 Patent.

24. 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.

25. The defendant New Balance Athletic Shoe, Inc. 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.

Count III
Patent Infringement by Nordica USA Group

26. The plaintiffs repeat and incorporate by reference the averments set forth in paragraphs 1 through 13 above.

27. The defendant Nordica USA Group has manufactured, offered for sale, and sold in the United States, including in this judicial district, ski boots 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.

28. The defendant Nordica USA Group has manufactured, offered for sale, and/or sold in the United States, including in this judicial district, ski boots 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.

29. The Schoeller-ComforTemp Three-Layered Composites and the Outlast Three-Layered Composites directly infringe claim 8 of the '810 Patent.

30. 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.

31. The defendant Nordica USA Group 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.

Count IV
Patent Infringement by Deckers Outdoor Corporation

32. The plaintiffs repeat and incorporate by reference the averments set forth in paragraphs 1 through 13 above.

33. The Defendant Deckers Outdoor Corporation, either directly or through its subsidiary Teva, has manufactured, offered for sale, and sold in the United States, including in this judicial district, hiking shoes 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.

34. The Defendant Deckers Outdoor Corporation, either directly or through its

subsidiary Teva, has manufactured, offered for sale, and/or sold in the United States, including in this judicial district, footwear and/or apparel 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.

35. The Schoeller-ComforTemp Three-Layered Composites and the Outlast Three-Layered Composites directly infringe claim 8 of the '810 Patent.

36. 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.

37. The defendant Deckers Outdoor Corporation 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 defendants The Burton Corporation, Nordica USA Group, New Balance Athletic Shoe, Inc., and Deckers Outdoor Corporation, have infringed the '810 Patent;

2. That the Court permanently enjoin the defendants The Burton Corporation, Nordica USA Group, New Balance Athletic Shoe, Inc., and Deckers Outdoor Corporation, their parents, subsidiaries, affiliates, divisions, officers, agents, servants, employees, directors, partners, representatives and all parties in active concert and/or participation with them from directly or indirectly making, having made, selling, offering for sale, distributing and/or using products

including composites that infringe the '810 Patent;

3. That the Court order the defendants The Burton Corporation, Nordica USA Group, New Balance Athletic Shoe, Inc., and Deckers Outdoor Corporation to account for and pay to Plaintiffs all damages caused to Plaintiffs by their 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
James G. Goggin
Attorney for the Plaintiffs

VERRILL & DANA, LLP
One Portland Square
P.O. Box 586
Portland, ME 04112
(207) 774-4000