

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2008-1053

BAYCHAR, INC. and BAYCHAR HOLDINGS LLC,

Plaintiffs-Appellants,

v.

BURTON CORPORATION, DECKERS OUTDOOR CORPORATION,
and NORDICA USA CORP.,

Defendants-Appellees.

Appeal from the United States District Court for the District of Maine
in case no. 04-CV-144, Judge D. Brock Hornby.

2008-1060

BAYCHAR, INC. and BAYCHAR HOLDINGS LLC,

Plaintiffs-Appellees,

v.

BURTON CORPORATION, DECKERS OUTDOOR CORPORATION,
and NORDICA USA CORP.,

Defendants-Appellants.

Appeal from the United States District Court for the District of Maine
in case no. 04-CV-144, Judge D. Brock Hornby.

ON MOTION

Before MAYER, LINN, and DYK, Circuit Judges.

DYK, Circuit Judge.

ORDER

Baychar, Inc. and Baychar Holdings, LLC (Baychar) move to dismiss the conditional cross-appeal, no. 2008-1060, filed by Burton Corporation, Deckers Outdoor Corporation, and Nordica USA Corp. (Burton). Burton opposes. Baychar replies.

Baychar sued Burton for patent infringement. Burton filed separate summary judgment motions, asserting invalidity based on anticipation and obviousness. The district court granted Burton's summary judgment motion based on anticipation and denied as moot Burton's motion based on obviousness.

Baychar appealed to this court challenging, among other issues, the district court's determination regarding anticipation. Burton filed a conditional cross-appeal challenging the district court's denial, based on mootness, of its summary judgment motion concerning obviousness.

We determine that Burton's cross-appeal is improper because, if successful, it would not expand the scope of the judgment in Burton's favor. See Bailey v. Dart Container Corp. of Mich., 292 F.3d 1360, 1362 (2002). However, Burton may as an appellee raise its arguments regarding the district court's denial of its summary judgment motion.

Accordingly,

IT IS ORDERED THAT:

- (1) The motion is granted. Appeal no. 2008-1060 is dismissed.
- (2) Each side shall bear its own costs in 2008-1060.

(3) The revised official caption in 2008-1053 is reflected above.

FOR THE COURT

April 7, 2008

Date

/s/ Timothy B. Dyk

Timothy B. Dyk
Circuit Judge

cc: John W. Kepler, III, Esq.
James E. Hartley, Esq.

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ISSUED AS A MANDATE (as to 2008-1060 only): April 7, 2008