

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

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|--------------------------------|---|-----------------------------|
| BAYCHAR, INC., ET AL., |) | |
| |) | |
| PLAINTIFFS |) | |
| |) | |
| v. |) | CIVIL No. 04-144-B-H |
| |) | |
| THE BURTON CORPORATION, |) | |
| ET AL., |) | |
| |) | |
| DEFENDANTS |) | |

**DECISION AND ORDER ON DEFENDANTS’
MOTION FOR RECONSIDERATION**

In my decision on attorney fees, I denied the defendants a fee award because they did not “contend that [the plaintiff’s] expert failed to implicate several of their products as infringing the ’810 Patent.”¹ Decision and Order on Defs.’ Mot. for Att’y Fees at 13 (Docket Item 231). The defendants now attempt to put forth such an argument. See Defs.’ Mot. for Reconsideration at 3 (Docket Item 232). As this argument was not presented in their motion for attorney fees, I

¹ This is in contrast to the motion for attorney fees in the companion case Baychar, Inc. v. Salomon/N. Am., Inc., where the defendant expressly argued that, “[i]n fact, Baychar’s own infringement expert did not mention [the accused] products in his report.” Def.’s Mot. for Att’y’s Fees, No. 04-136-B-C, at 6 (Docket Item 169).

will not consider it now. Accordingly, the defendants' motion for reconsideration is **DENIED**.

SO ORDERED.

DATED THIS 10TH DAY OF DECEMBER, 2008

/s/D. BROCK HORNBY
D. BROCK HORNBY
UNITED STATES DISTRICT JUDGE