

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

BAYCHAR INC. and BAYCHAR  
HOLDINGS LLC,

Plaintiffs

v.

Civil No. 04-136-B-C

SALOMON/NORTH AMERICA, INC.,

Defendant

Gene Carter, Senior District Judge

**ORDER AFFIRMING THE RECOMMENDED  
DECISION OF THE MAGISTRATE JUDGE**

The United States Magistrate Judge having filed with the Court, with copies to counsel, her Recommended Decision (Docket Item No. 94) on Defendant's Motions for Summary Judgment on Implied License/Patent Exhaustion and Non-Infringement (Docket Item Nos. 51, 53); Plaintiff having filed its Objections to the Recommended Decision (Docket Item No. 96); Defendant having filed its Response to Plaintiff's Objection to the Recommended Decision (Docket Item No. 99); and this Court having reviewed and considered the Magistrate Judge's Recommended Decision, together with the entire record, and this Court having made a de novo determination of all matters adjudicated by the Magistrate Judge's Recommended Decision, and concurring with the recommendations of the United States Magistrate Judge for the reasons set forth in her

Recommended Decision, and having determined that no further proceeding is necessary,  
it is **ORDERED** as follows:

1. The objections of the Plaintiff are **DENIED**;
2. The Recommended Decision of the Magistrate Judge is hereby **AFFIRMED**;
3. The Defendant's Motion for Summary Judgment on Patent Infringement (Docket Item No. 53) be, and it is hereby, **GRANTED**, and, alternatively, Defendant's Motion for Summary Judgment on Exhaustion/Implied License (Docket Item No. 51) be, and it is hereby, **GRANTED**;
4. The Defendant's Motion for Summary Judgment on Anticipation (Docket Item No. 37) and Motion for Summary Judgment on Obviousness (Docket Item No. 49) be, and they are hereby, **DISMISSED AS MOOT**; and
5. Plaintiff's request for oral argument (Docket Item No. 97) is hereby **DENIED**.

/s/ Gene Carter  
Gene Carter  
Senior District Court Judge

Dated at Portland, Maine this 6th day of November, 2006.

**Plaintiff**

**BAYCHAR INC**

represented by **JAMES G. GOGGIN**  
VERRILL & DANA  
1 PORTLAND SQUARE  
P.O. BOX 586  
PORTLAND, ME 04112-0586  
(207) 253-4602  
Email: jgoggin@verrilldana.com  
*TERMINATED: 11/03/2005*  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**JAMES A.G. HAMILTON**  
BURNS & LEVINSON LLP  
125 SUMMER STREET  
BOSTON, MA 02110  
617-345-3000  
Email: jhamilton@burnslev.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**JERRY COHEN**  
BURNS & LEVINSON LLP  
125 SUMMER STREET  
BOSTON, MA 02110  
617-345-3000  
Email: jcohen@burnslev.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**MICHAEL P TWOHIG**  
BURNS & LEVINSON LLP  
125 SUMMER STREET  
BOSTON, MA 02110  
617-345-3000  
Email: mtwohig@burnslev.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**RUFUS E. BROWN**  
BROWN & BURKE  
85 Exchange Street  
P.O. BOX 7530  
PORTLAND, ME 04101  
207-775-0265  
Email:  
rbrown@brownburkelaw.com  
*ATTORNEY TO BE NOTICED*

**Plaintiff**

**BAYCHAR HOLDINGS LLC**

represented by **JAMES G. GOGGIN**  
(See above for address)  
*TERMINATED: 11/03/2005*  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**JAMES A.G. HAMILTON**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**JERRY COHEN**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**MICHAEL P TWOHIG**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**RUFUS E. BROWN**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Plaintiff**

**BAYCHAR**  
*TERMINATED: 08/17/2004*

represented by **JAMES G. GOGGIN**  
(See above for address)  
*TERMINATED: 11/03/2005*  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**MICHAEL P TWOHIG**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

V.

**Defendant**

**SALOMON / NORTH  
AMERICA, INC**

represented by **DONALD A DEGNAN**  
HOLLAND & HART LLP  
1800 BROADWAY, SUITE 300  
BOULDER, CO 80302  
303-473-2700  
Email: ddegnan@hollandhart.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**LEE F. JOHNSTON**  
HOLLAND & HART LLP  
555 17TH STREET  
SUITE 3200  
PO BOX 8749  
DENVER, CO 80201-8749  
(303) 295-8000  
Email:  
ljohnston@hollandhart.com

*LEAD ATTORNEY  
ATTORNEY TO BE NOTICED*

**JAMES E. HARTLEY**  
HOLLAND & HART LLP  
555 17TH STREET  
SUITE 3200  
PO BOX 8749  
DENVER, CO 80201-8749  
(303) 295-8000  
Email: jhartley@hollandhart.com  
*ATTORNEY TO BE NOTICED*

**GLEN L. PORTER**  
EATON PEABODY  
P. O. BOX 1210  
BANGOR, ME 04402  
947-0111  
Email:  
gporter@eatonpeabody.com  
*ATTORNEY TO BE NOTICED*

**Counter Claimant**

**SALOMON / NORTH  
AMERICA, INC**

represented by **DONALD A DEGNAN**  
(See above for address)  
*LEAD ATTORNEY  
ATTORNEY TO BE NOTICED*

**GLEN L. PORTER**  
(See above for address)  
*LEAD ATTORNEY  
ATTORNEY TO BE NOTICED*

**LEE F. JOHNSTON**  
(See above for address)  
*LEAD ATTORNEY  
ATTORNEY TO BE NOTICED*

**JAMES E. HARTLEY**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

V.

**Counter Defendant**

**BAYCHAR HOLDINGS LLC**

represented by **JAMES G. GOGGIN**  
(See above for address)  
*TERMINATED: 11/03/2005*  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**MICHAEL P TWOHIG**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Counter Defendant**

**BAYCHAR INC**

represented by **JAMES G. GOGGIN**  
(See above for address)  
*TERMINATED: 11/03/2005*  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**MICHAEL P TWOHIG**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*