

NORMAN E. LEHRER, P.C.  
Norman E. Lehrer, Esquire (NL 8135)  
1205 North Kings Highway  
Cherry Hill, New Jersey 08034  
856.429.4100  
Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
CAMDEN VICINAGE

NESEA Construction, Incorporated,	:	
David/Randall Associates, Inc., and	:	
Safety Rail Source, LLC	:	
	:	
Plaintiffs,	:	CIVIL ACTION NO. 07-
	:	
v.	:	COMPLAINT
	:	
Activar, Inc.,	:	
	:	
Defendant.	:	

Plaintiffs, for their complaint against the Defendant, allege and aver as follows:

THE PARTIES AND JURISDICTION

1. Plaintiff, NESEA Construction, Incorporated (“NESEA”), is a New Jersey corporation, having a place of business at 4201 Church Road, Mt. Laurel, New Jersey 08054.
2. Plaintiff, David/Randall Associates, Inc. (“DAVID/RANDALL”), is a Pennsylvania corporation, having an address of P.O. Box 123, Harleysville, Pennsylvania 19438.
3. Plaintiff, Safety Rail Source, LLC (“SAFETY RAIL”), is a Pennsylvania limited liability company having an address of Suite 200, 2570 Boulevard of the Generals, Norristown, Pennsylvania 19403.

4. Defendant, Activar, Inc. (hereinafter “ACTIVAR”), is a Minnesota Corporation, having its principal place of business at 7808 Creekridge Circle, Bloomington, Minnesota 55439.

5. This Court has jurisdiction over this complaint under 28 U.S.C. §1338(a) in that the cause of action arises under the Patent Laws of the United States, and particularly, 35 U.S.C. §§271. Venue is proper in this judicial district pursuant to 28 U.S.C. §§1400(b) and 1331(c).

#### PATENT INFRINGEMENT

6. On January 2, 2001, U.S. Patent No. 6,167,659 duly and legally issued to NESEA for an invention entitled “Roof or Access Hatch Safety Railing System” (the “Patent”), a copy of which is attached hereto as Exhibit A. DAVID/RANDALL is the exclusive licensee under the Patent by agreement with NESEA and SAFETY RAIL is an exclusive sublicense under an agreement with DAVID/RANDALL.

7. At the request of ACTIVAR, the Patent was reexamined by the Patent and Trademark Office and on March 21, 2006, the PTO issued Reexamination Certificate No. 5306, a copy of which is attached hereto as Exhibit B.

8. In contravention to 35 U.S.C. §§271(a)(b) and (c), ACTIVAR has willfully and deliberately infringed the reexamined Patent by making, using, selling, and/or offering to sell, or inducing others to make, use sell, and/or offer to sell products embodying the invention claimed in claims 17-22 of the reexamined Patent. Such acts of infringement have occurred and continue to occur without the authority or license of Plaintiffs.

9. Plaintiffs have enjoyed commercial success throughout the United States for the patented invention and this enjoyment is being damaged and will continue to be damaged by the infringing activities of ACTIVAR complained of herein.

WHEREFORE, Plaintiffs pray for judgment against ACTIVAR as follows:

A. That, pursuant to 35 U.S.C. §283, preliminary and final injunctions be issued enjoining ACTIVAR, its officers, agents, servants, employees and all those persons in active concert or participation with them from further infringement of the Patent;

B. That, pursuant to 35 U.S.C. §284, ACTIVAR account to Plaintiffs for damages for all past infringement, including treble damages because of the willful nature of such infringement;

C. That, pursuant to 35 U.S.C. §285, Plaintiffs be awarded costs and attorney's fees incurred in connection with this action; and

D. That Plaintiffs have such other and further relief as this Court deems just and proper.

NORMAN E. LEHRER, P.C.

By: /s/ Norman E. Lehrer  
Norman E. Lehrer  
Attorneys for Plaintiffs

Dated: September 19, 2007