

1 RUSS AUGUST & KABAT
Marc A. Fenster, State Bar No. 181067
2 Email: mfenster@raklaw.com
Irene Y. Lee, State Bar No. 213625
3 Email: ilee@raklaw.com
12424 Wilshire Boulevard, 12th Floor
4 Los Angeles, California 90025
Telephone: 310.826.7474
5 Facsimile: 310.826.6991

6 MISHCON DE REYA NEW YORK LLP
Mark S. Raskin, (*Pro Hac Vice*)
7 Email: mark.raskin@mishcon.com
750 7th Avenue, 26th Floor
8 New York, New York 10019
Telephone: 212.612.3270
9 Facsimile: 212.612.3297

10 Attorneys for Plaintiff
McRO, Inc., d.b.a. Planet Blue

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13 **SOUTHERN DIVISION**

15 McRO, Inc., dba Planet Blue,

17 Plaintiff,

18 v.

20 Deep Silver, Inc. and Koch Media
DmbH

22 Defendants.

CASE No.

**COMPLAINT FOR PATENT
INFRINGEMENT**

JURY TRIAL DEMANDED

RUSS, AUGUST & KABAT

RUSS, AUGUST & KABAT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COMPLAINT FOR PATENT INFRINGEMENT

McRo, Inc., d.b.a. Planet Blue (“Planet Blue”), brings this Complaint for patent infringement against Koch Media GmbH (“Koch Media”) and Deep Silver, Inc. (“Deep Silver”), and hereby states as follows:

NATURE OF THE ACTION

This is an action for patent infringement of United States Patent No. 6,307,576 (the “576 Patent”) and United States Patent No. 6,611,278 (the “278 Patent”) (collectively, the “Patents-in-Suit”) under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*, and seeking damages and injunctive and other relief under 35 U.S.C. § 281, *et seq.*

PARTIES

1. Planet Blue is a corporation existing under the laws of Delaware, with its principal place of business at Santa Monica, California. Planet Blue is actively involved in the advertising industry as a computer graphic, visual effects, and animation services company, which services utilize methods covered by the Patents-in-Suit.

2. Upon information and belief, Defendant Koch Media GmbH is a corporation operating and existing under the laws of Germany, with its principal place of business at Lochhamer Str. 0, D-82152 Planegg/Munich, Germany. Koch Media GmbH is engaged in the business of publishing computer and/or video games.

3. Upon information and belief, Defendant Deep Silver, Inc. is a subsidiary of Koch Media GmbH and a corporation existing under the laws of California, with its principal place of business at 900 Larkspur Landing Circle, Suite 103, Larkspur, California. Deep Silver, Inc. is engaged in the business of developing and publishing computer and/or video games.

JURISDICTION AND VENUE

4. This is a complaint for patent infringement under 35 U.S.C. § 271.

RUSS, AUGUST & KABAT

1 This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and
2 1338(a).

3 5. Upon information and belief, this Court has personal jurisdiction over
4 Koch Media and Deep Silver because Koch Media and Deep Silver are doing and
5 have done substantial business in this District, including business relating to the
6 advertising, sale, and distribution for sale of computer and/or video games made
7 using the methods claimed in the Patents-in-Suit.

8 6. Venue is proper in this judicial district as to Koch Media and Deep
9 Silver pursuant to 28 U.S.C. §§ 1391 and 1400(b), because Koch Media and Deep
10 Silver are subject to personal jurisdiction in this judicial district and have
11 committed acts of infringement in this judicial district.

12 **FACTUAL BACKGROUND**

13 7. Planet Blue is a small visual effects company that creates computer
14 graphics and animations. Planet Blue was founded in 1988 by Maury Rosenfeld,
15 who has been the sole owner of Planet Blue since 1993.

16 8. Mr. Rosenfeld has worked as a successful computer graphics/visual
17 effects designer and animator for over twenty years. During the late 1980s, Mr.
18 Rosenfeld won an Emmy award for his work on the show “Secrets and Mysteries.”
19 Mr. Rosenfeld received a Monitor Award for his work on Pee Wee’s Playhouse
20 and he received an award from the National Computer Graphics Association for his
21 work in the International Animation Competition for “Hidden Heroes.” Mr.
22 Rosenfeld worked with the teams that created the special effects for “Star Trek:
23 The Next Generation” and “Max Headroom.”

24 9. Mr. Rosenfeld filed patent application no. 08/942,987 (the “’987
25 Application”), that would eventually issue as the ’576 Patent, relating to a method
26 for performing and animating lip synchronization and facial expressions on three-
27 dimensional animated characters on October 2, 1997.

28 10. On October 23, 2001, the United States Patent and Trademark Office

RUSS, AUGUST & KABAT

1 (“USPTO”) duly and lawfully issued the ’576 Patent, titled “Method for
2 Automatically Animating Lip Synchronization and Facial Expression of Animated
3 Characters.” The ’576 Patent is attached hereto as **Exhibit A**.

4 11. On August 26, 2003, the USPTO duly and lawfully issued the ’278
5 Patent, titled “Method for Automatically Animating Lip Synchronization and
6 Facial Expression of Animated Characters.” The ’278 Patent is attached hereto as
7 **Exhibit B**.

8 12. On January 25, 2013, Planet Blue, through its attorneys, sent a letter to
9 Deep Silver notifying them of their infringement of the '576 and '278 Patents.

10 13. Each of the Patents-in-Suit is valid and enforceable.

11 14. Planet Blue is the assignee of all rights, title, and interest in and to the
12 Patents-in-Suit. Planet Blue holds the right to sue and recover damages for
13 infringement thereof, including past infringement.

14 15. Unlike the traditional method of manually animating lip-
15 synchronization, or a method using facial/video capture, the Patents-in-Suit cover
16 a method and system for automating the lip-synchronization animation process
17 and automating the animation of facial expression of three-dimensional animated
18 characters, as used in computer and/or video games.

19 16. Upon information and belief, Koch Media and Deep Silver, directly
20 or through intermediaries (including distributors, retailers, and others), have acted
21 and are acting to develop, publish, manufacture, import, ship, distribute, offer for
22 sale, sell, and/or advertise (including the provision of an interactive web page) the
23 following computer and/or video games identified in **Exhibit C**. These computer
24 and/or video games identified in Exhibit C have been and continue to be
25 purchased by consumers in the United States, the State of California, and the
26 Central District of California.

27 17. Upon information and belief, Deep Silver employs software methods
28 and processes to automate the animation of lip synchronization and facial

1 expression for its three-dimensional characters during the creation and
2 development of the computer and/or video games identified in Exhibit C. Upon
3 further information and belief, Deep Silver's uses of those lip synchronization and
4 facial expression animation methods and processes to create the aforementioned
5 computer and/or video games identified in Exhibit C infringe, either literally or by
6 equivalents, one or more claims of the Patents-in-Suit in violation of 35 U.S.C. §
7 271.

8 **COUNT I: INFRINGEMENT OF THE '576 PATENT**

9 18. Planet Blue realleges and incorporates by reference paragraphs 1-17.

10 19. Upon information and belief, Koch Media and Deep Silver, as part of
11 the creation and development of the computer and/or video games identified in
12 Exhibit C, have used and continue to use software processes in the United States
13 for automatically performing and animating character lip synchronization using the
14 phonetic structure of the words to be spoken by the characters and have made,
15 used, offered to sell, sold, and/or imported, and continue to make, use, offer to sell,
16 sell, and/or import, computer and/or video games created using those processes in
17 the United States, including this judicial district. By using the aforementioned
18 software processes, Deep Silver has directly infringed the '576 Patent under 35
19 U.S.C. § 271(a), either literally or under the doctrine of equivalents. By using,
20 offering to sell, selling, and/or importing computer and/or video games created
21 using the aforementioned software processes, Koch Media and Deep Silver have
22 been and are now infringing the '576 Patent under 35 U.S.C. § 271(g), either
23 literally or under the doctrine of equivalents. Koch Media and Deep Silver have
24 had knowledge of the '576 Patent since at least as early as January 25, 2013 as a
25 result of correspondence between Planet Blue's attorneys and employees at Koch
26 Media and Deep Silver, and Deep Silver's actions constitute knowing and willful
27 infringement of the '576 Patent.

RUSS, AUGUST & KABAT

1 20. Koch Media and Deep Silver, by way of their infringing activities,
2 have caused and continue to cause Planet Blue to suffer damages in an amount to
3 be determined at trial. Planet Blue has no adequate remedy at law against Koch
4 Media and Deep Silver's acts of infringement and, unless Koch Media and Deep
5 Silver are enjoined from their infringement of the '576 Patent, Planet Blue will
6 suffer irreparable harm.

7 21. Planet Blue is in compliance with the requirements of 35
8 U.S.C. § 287.

9 **COUNT II: INFRINGEMENT OF THE '278 PATENT**

10 22. Planet Blue realleges and incorporates by reference paragraphs 1-21.

11 23. Upon information and belief, Koch Media and Deep Silver, as part of
12 the creation and development of the computer and/or video games identified in
13 Exhibit C, have used and continue to use software processes in the United States
14 for automatically performing and animating character lip synchronization using the
15 phonetic structure of the words to be spoken by the characters and have made,
16 used, offered to sell, sold, and/or imported, and continue to make, use, offer to sell,
17 sell, and/or import, computer and/or video games created using those processes in
18 the United States, including this judicial district. By using the aforementioned
19 software processes, Deep Silver has directly infringed the '278 Patent under 35
20 U.S.C. § 271(a), either literally or under the doctrine of equivalents. By using,
21 offering to sell, selling, and/or importing computer and/or video games created
22 using the aforementioned software processes, Koch Media and Deep Silver have
23 been and are now infringing the '278 Patent under 35 U.S.C. § 271(g), either
24 literally or under the doctrine of equivalents. Koch Media and Deep Silver have
25 had knowledge of the '278 Patent since at least as early as January 25, 2013 as a
26 result of correspondence between Planet Blue's attorneys and employees at Koch
27 Media and Deep Silver, and Koch Media and Deep Silver's actions constitute
28 knowing and willful infringement of the '278 Patent.

RUSS, AUGUST & KABAT

1 subsidiaries, parents and all others acting in concert or privity with any of them
2 from infringing, inducing the infringement of, or contributing to the infringement
3 of the '278 Patent;

4 G. Permanently enjoining the sale of the computer and/or video games
5 created using the patented methods of the Patents-in-Suit;

6 H. Awarding to Planet Blue the damages to which it is entitled under 35
7 U.S.C. § 284 for Koch Media and Deep Silver's past infringement and any
8 continuing or future infringement up until the date Koch Media and Deep Silver
9 are finally and permanently enjoined from further infringement, including both
10 compensatory damages and treble damages for willful infringement;

11 I. Declaring this to be an exceptional case and awarding Planet Blue
12 attorneys' fees under 35 U.S.C. § 285;

13 J. Awarding Planet Blue costs and expenses in this action;

14 K. Awarding Planet Blue pre- and post-judgment interest on its damages;
15 and

16 L. Awarding Planet Blue such other and further relief in law or in equity
17 as this Court deems just and proper.

18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Planet Blue, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

Dated: November 27, 2013

Respectfully submitted,

RUSS AUGUST & KABAT

By: /s/ Irene Y. Lee
Marc A. Fenster
Irene Y. Lee

MISHCON DE REYA NEW YORK LLP
Mark S. Raskin,

Attorneys for Plaintiff
McRo, Inc., d.b.a. Planet Blue

RUSS, AUGUST & KABAT