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

15 McRO, Inc., dba Planet Blue,

17 Plaintiff,

18 v.

19 Ubisoft Entertainment S.A., Ubisoft,
20 Inc., and Red Storm Entertainment,
21 Inc.

22 Defendants.
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CASE No.

**COMPLAINT FOR PATENT
INFRINGEMENT**

JURY TRIAL DEMANDED

RUSS, AUGUST & KABAT

1 **COMPLAINT FOR PATENT INFRINGEMENT**

2 McRo, Inc., d.b.a. Planet Blue (“Planet Blue”), brings this Complaint for
3 patent infringement against Ubisoft Entertainment S.A., Ubisoft, Inc., and Red
4 Storm Entertainment, Inc. (collectively “Ubisoft”), and hereby states as follows:

5 **NATURE OF THE ACTION**

6 This is an action for patent infringement of United States Patent No.
7 6,307,576 (the “’576 Patent”) and United States Patent No. 6,611,278 (the “’278
8 Patent”) (collectively, the “Patents-in-Suit”) under the Patent Laws of the United
9 States, 35 U.S.C. § 1, *et seq.*, and seeking damages and injunctive and other
10 relief under 35 U.S.C. § 281, *et seq.*

11 **PARTIES**

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

17 2. Upon information and belief, Defendant Ubisoft Entertainment S.A.
18 is a corporation operating and existing under the laws of France with its principal
19 place of business at 28, rue Armand Carrel 93108 Montreuil-Sous-Bois, France.
20 Ubisoft Entertainment is engaged in the business of publishing computer and/or
21 video games.

22 3. Upon information and belief, Defendant Ubisoft, Inc. is a corporation
23 existing under the laws of California, with its principal place of business at 625
24 Third Street, San Francisco, California. Ubisoft, Inc. is engaged in the business of
25 publishing computer and/or video games.

26 4. Upon information and belief, Defendant Red Storm Entertainment,
27 Inc. is a subsidiary of Ubisoft Entertainment. Red Storm Entertainment, Inc. is a
28 corporation existing under the laws of North Carolina, with its principal place of

1 business at 2000 CentreGreen Way, Suite 300, Cary, North Carolina. Red Storm
2 Entertainment, Inc. is engaged in the business of developing computer and/or
3 video games.

4 **JURISDICTION AND VENUE**

5 5. This is a complaint for patent infringement under 35 U.S.C. § 271.
6 This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and
7 1338(a).

8 6. Upon information and belief, this Court has personal jurisdiction over
9 Ubisoft Entertainment S.A., Ubisoft, Inc., and Red Storm Entertainment, Inc.
10 because Ubisoft Entertainment S.A., Ubisoft, Inc., and Red Storm Entertainment,
11 Inc. are doing and have done substantial business in this District, including
12 business relating to the advertising, sale, and distribution for sale of computer
13 and/or video games made using the methods claimed in the Patents-in-Suit.

14 7. Venue is proper in this judicial district as to Ubisoft Entertainment
15 S.A., Ubisoft, Inc., and Red Storm Entertainment, Inc. pursuant to 28 U.S.C. §§
16 1391 and 1400(b), because Ubisoft Entertainment S.A., Ubisoft, Inc., and Red
17 Storm Entertainment, Inc. are subject to personal jurisdiction in this judicial district
18 and have committed acts of infringement in this judicial district.

19 **FACTUAL BACKGROUND**

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

23 9. Mr. Rosenfeld has worked as a successful computer graphics/visual
24 effects designer and animator for over twenty years. During the late 1980s, Mr.
25 Rosenfeld won an Emmy award for his work on the show “Secrets and Mysteries.”
26 Mr. Rosenfeld received a Monitor Award for his work on Pee Wee’s Playhouse
27 and he received an award from the National Computer Graphics Association for his
28 work in the International Animation Competition for “Hidden Heroes.” Mr.

1 Rosenfeld worked with the teams that created the special effects for “Star Trek:
2 The Next Generation” and “Max Headroom.”

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

7 11. On October 23, 2001, the United States Patent and Trademark Office
8 (“USPTO”) duly and lawfully issued the ’576 Patent, titled “Method for
9 Automatically Animating Lip Synchronization and Facial Expression of Animated
10 Characters.” The ’576 Patent is attached hereto as **Exhibit A**.

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

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

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

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

24 16. Upon information and belief, Ubisoft Entertainment S.A., Ubisoft,
25 Inc., and Red Storm Entertainment, Inc., directly or through intermediaries
26 (including distributors, retailers, and others), have acted and are acting to develop,
27 publish, manufacture, import, ship, distribute, offer for sale, sell, and/or advertise
28 (including the provision of an interactive web page) the following computer and/or

1 video games identified in **Exhibit C**. These computer and/or video games
2 identified in Exhibit C have been and continue to be purchased by consumers in
3 the United States, the State of California, and the Central District of California.

4 17. Upon information and belief, Ubisoft Entertainment S.A., Ubisoft,
5 Inc., and Red Storm Entertainment, Inc. employ software methods and processes
6 to automate the animation of lip synchronization and facial expression for its
7 three-dimensional characters during the creation and development of the computer
8 and/or video games identified in Exhibit C. Upon further information and belief,
9 Ubisoft Entertainment S.A., Ubisoft, Inc., and Red Storm Entertainment, Inc.'s
10 uses of those lip synchronization and facial expression animation methods and
11 processes to create the aforementioned computer and/or video games identified in
12 Exhibit C infringe, either literally or by equivalents, one or more claims of the
13 Patents-in-Suit in violation of 35 U.S.C. § 271.

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

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

16 19. Upon information and belief, Ubisoft Entertainment S.A., Ubisoft,
17 Inc., and Red Storm Entertainment, Inc., as part of the creation and development of
18 the computer and/or video games identified in Exhibit C, have used and continue to
19 use software processes in the United States for automatically performing and
20 animating character lip synchronization using the phonetic structure of the words to
21 be spoken by the characters and have made, used, offered to sell, sold, and/or
22 imported, and continue to make, use, offer to sell, sell, and/or import, computer
23 and/or video games created using those processes in the United States, including
24 this judicial district. By using the aforementioned software processes, Ubisoft,
25 Inc. and Red Storm Entertainment, Inc. have directly infringed the '576 Patent
26 under 35 U.S.C. § 271(a), either literally or under the doctrine of equivalents. By
27 using, offering to sell, selling, and/or importing computer and/or video games
28 created using the aforementioned software processes, Ubisoft Entertainment S.A.

1 and Ubisoft, Inc. have been and are now infringing the '576 Patent under 35 U.S.C.
2 § 271(g), either literally or under the doctrine of equivalents.

3 20. Ubisoft, by way of its infringing activities, has caused and continues
4 to cause Planet Blue to suffer damages in an amount to be determined at trial.
5 Planet Blue has no adequate remedy at law against Ubisoft's acts of infringement
6 and, unless Ubisoft is enjoined from its infringement of the '576 Patent, Planet
7 Blue will suffer irreparable harm.

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

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

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

12 23. Upon information and belief, Ubisoft Entertainment S.A., Ubisoft,
13 Inc., and Red Storm Entertainment, Inc., as part of the creation and development of
14 the computer and/or video games identified in Exhibit C, have used and continue to
15 use software processes in the United States for automatically performing and
16 animating character lip synchronization using the phonetic structure of the words to
17 be spoken by the characters and have made, used, offered to sell, sold, and/or
18 imported, and continue to make, use, offer to sell, sell, and/or import, computer
19 and/or video games created using those processes in the United States, including
20 this judicial district. By using the aforementioned software processes, Ubisoft, Inc.
21 and Red Storm Entertainment, Inc. have directly infringed the '278 Patent under 35
22 U.S.C. § 271(a), either literally or under the doctrine of equivalents. By using,
23 offering to sell, selling, and/or importing computer and/or video games created
24 using the aforementioned software processes, Ubisoft, Inc. and Red Storm
25 Entertainment, Inc. have been and are now infringing the '278 Patent under 35
26 U.S.C. § 271(g), either literally or under the doctrine of equivalents.

27 24. Ubisoft, by way of its infringing activities, has caused and continues
28 to cause Planet Blue to suffer damages in an amount to be determined at trial.

1 Planet Blue has no adequate remedy at law against Ubisoft's acts of infringement
2 and, unless Ubisoft is enjoined from its infringement of the '278 Patent, Planet
3 Blue will suffer irreparable harm.

4 25. Planet Blue is in compliance with the requirements of 35
5 U.S.C. § 287.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Planet Blue respectfully requests that this Court enter
8 judgment in its favor as follows:

9 A. Holding that Ubisoft, Inc. and Red Storm Entertainment, Inc. have
10 willfully infringed the '576 Patent, either literally or under the doctrine of
11 equivalents, under 35 U.S.C. § 271(a);

12 B. Holding that Ubisoft Entertainment S.A. and Ubisoft, Inc. have
13 willfully infringed the '576 Patent, either literally or under the doctrine of
14 equivalents, under 35 U.S.C. § 271(g);

15 C. Holding that Ubisoft, Inc. and Red Storm Entertainment, Inc. have
16 willfully infringed the '278 Patent, either literally or under the doctrine of
17 equivalents, under 35 U.S.C. § 271(a);

18 D. Holding that Ubisoft Entertainment S.A. and Ubisoft, Inc. have
19 willfully infringed the '278 Patent, either literally or under the doctrine of
20 equivalents, under 35 U.S.C. § 271(g);

21 E. Permanently enjoining Ubisoft Entertainment S.A., Ubisoft, Inc., and
22 Red Storm Entertainment, Inc., and their officers, directors, agents, servants,
23 employees, affiliates, divisions, branches, subsidiaries, parents and all others acting
24 in concert or privity with any of them from infringing, inducing the infringement
25 of, or contributing to the infringement of the '576 Patent;

26 F. Permanently enjoining Ubisoft Entertainment S.A., Ubisoft, Inc., and
27 Red Storm Entertainment, Inc., and their officers, directors, agents, servants,
28 employees, affiliates, divisions, branches, subsidiaries, parents and all others acting

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in concert or privity with any of them from infringing, inducing the infringement of, or contributing to the infringement of the '278 Patent;

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

H. Awarding to Planet Blue the damages to which it is entitled under 35 U.S.C. § 284 for Ubisoft Entertainment S.A., Ubisoft, Inc., and Red Storm Entertainment, Inc.'s past infringement and any continuing or future infringement up until the date Ubisoft Entertainment S.A., Ubisoft, Inc., and Red Storm Entertainment, Inc. are finally and permanently enjoined from further infringement, including both compensatory damages and treble damages for willful infringement;

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

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

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

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

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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

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