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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.

20 Valve Corporation

21 Defendant.

CASE No.

**COMPLAINT FOR PATENT
INFRINGEMENT**

JURY TRIAL DEMANDED

RUSS, AUGUST & KABAT

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COMPLAINT FOR PATENT INFRINGEMENT

McRo, Inc., d.b.a. Planet Blue (“Planet Blue”), brings this Complaint for patent infringement against Valve Corporation (hereinafter “Valve”), 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 Valve Corp. is a corporation operating and existing under the laws of Washington, with its principal place of business at 10900 NE 4th St., Suite 500, Bellevue, Washington. Valve Corp. is engaged in the business of developing and publishing computer and/or video games.

JURISDICTION AND VENUE

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

4. Upon information and belief, this Court has personal jurisdiction over Valve because Valve is doing and has done substantial business in this District, including business relating to the advertising, sale, and distribution for sale of

RUSS, AUGUST & KABAT

1 computer and/or video games made using the methods claimed in the Patents-in-
2 Suit.

3 5. Venue is proper in this judicial district as to Valve pursuant to 28
4 U.S.C. §§ 1391 and 1400(b), because Valve is subject to personal jurisdiction in
5 this judicial district and has committed acts of infringement in this judicial district.

6 **FACTUAL BACKGROUND**

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

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

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

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

26 10. On August 26, 2003, the USPTO duly and lawfully issued the ’278
27 Patent, titled “Method for Automatically Animating Lip Synchronization and
28 Facial Expression of Animated Characters.” The ’278 Patent is attached hereto as

RUSS, AUGUST & KABAT

1 **Exhibit B.**

2 11. Each of the Patents-in-Suit is valid and enforceable.

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

6 13. Unlike the traditional method of manually animating lip-
7 synchronization, or a method using facial/video capture, the Patents-in-Suit cover
8 a method and system for automating the lip-synchronization animation process
9 and automating the animation of facial expression of three-dimensional animated
10 characters, as used in computer and/or video games.

11 14. Upon information and belief, Valve, directly or through
12 intermediaries (including distributors, retailers, and others), has acted and is acting
13 to develop, publish, manufacture, import, ship, distribute, offer for sale, sell,
14 and/or advertise (including the provision of an interactive web page) the following
15 computer and/or video games identified in **Exhibit C**. These computer and/or
16 video games identified in Exhibit C have been and continue to be purchased by
17 consumers in the United States, the State of California, and the Central District of
18 California.

19 15. Upon information and belief, Valve employs software methods and
20 processes to automate the animation of lip synchronization and facial expression
21 for its three-dimensional characters during the creation and development of the
22 computer and/or video games identified in Exhibit C. Upon further information
23 and belief, Valve's uses of those lip synchronization and facial expression
24 animation methods and processes to create the aforementioned computer and/or
25 video games identified in Exhibit C infringe, either literally or by equivalents, one
26 or more claims of the Patents-in-Suit in violation of 35 U.S.C. § 271.

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

28 16. Planet Blue realleges and incorporates by reference paragraphs 1-15.

1 17. Upon information and belief, Valve, as part of the creation and
2 development of the computer and/or video games identified in Exhibit C, has used
3 and continues to use software processes in the United States for automatically
4 performing and animating character lip synchronization using the phonetic
5 structure of the words to be spoken by the characters and has made, used, offered
6 to sell, sold, and/or imported, and continues to make, use, offer to sell, sell, and/or
7 import, computer and/or video games created using those processes in the United
8 States, including this judicial district. By using the aforementioned software
9 processes, Valve has directly infringed the '576 Patent under 35 U.S.C. § 271(a),
10 either literally or under the doctrine of equivalents. By using, offering to sell,
11 selling, and/or importing computer and/or video games created using the
12 aforementioned software processes, Valve has been and is now infringing the '576
13 Patent under 35 U.S.C. § 271(g), either literally or under the doctrine of
14 equivalents.

15 18. Valve, by way of its infringing activities, has caused and continues to
16 cause Planet Blue to suffer damages in an amount to be determined at trial. Planet
17 Blue has no adequate remedy at law against Valve's acts of infringement and,
18 unless Valve is enjoined from its infringement of the '576 Patent, Planet Blue will
19 suffer irreparable harm.

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

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

23 20. Planet Blue realleges and incorporates by reference paragraphs 1-19.

24 21. Upon information and belief, Valve, as part of the creation and
25 development of the computer and/or video games identified in Exhibit C, has used
26 and continues to use software processes in the United States for automatically
27 performing and animating character lip synchronization using the phonetic
28 structure of the words to be spoken by the characters and has made, used, offered

RUSS, AUGUST & KABAT

1 to sell, sold, and/or imported, and continues to make, use, offer to sell, sell, and/or
2 import, computer and/or video games created using those processes in the United
3 States, including this judicial district. By using the aforementioned software
4 processes, Valve has directly infringed the '278 Patent under 35 U.S.C. § 271(a),
5 either literally or under the doctrine of equivalents. By using, offering to sell,
6 selling, and/or importing computer and/or video games created using the
7 aforementioned software processes, Valve has been and is now infringing the '278
8 Patent under 35 U.S.C. § 271(g), either literally or under the doctrine of
9 equivalents.

10 22. Valve, by way of its infringing activities, has caused and continues to
11 cause Planet Blue to suffer damages in an amount to be determined at trial. Planet
12 Blue has no adequate remedy at law against Valve's acts of infringement and,
13 unless Valve is enjoined from its infringement of the '278 Patent, Planet Blue will
14 suffer irreparable harm.

15 23. Planet Blue is in compliance with the requirements of 35
16 U.S.C. § 287.

17 **PRAYER FOR RELIEF**

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

20 A. Holding that Valve has willfully infringed the '576 Patent, either
21 literally or under the doctrine of equivalents, under 35 U.S.C. § 271(a);

22 B. Holding that Valve has willfully infringed the '576 Patent, either
23 literally or under the doctrine of equivalents, under 35 U.S.C. § 271(g);

24 C. Holding that Valve has willfully infringed the '278 Patent, either
25 literally or under the doctrine of equivalents, under 35 U.S.C. § 271(a);

26 D. Holding that Valve has willfully infringed the '278 Patent, either
27 literally or under the doctrine of equivalents, under 35 U.S.C. § 271(g);
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1 E. Permanently enjoining Valve and its officers, directors, agents,
2 servants, employees, affiliates, divisions, branches, subsidiaries, parents and all
3 others acting in concert or privity with any of them from infringing, inducing the
4 infringement of, or contributing to the infringement of the '576 Patent;

5 F. Permanently enjoining Valve and its officers, directors, agents,
6 servants, employees, affiliates, divisions, branches, subsidiaries, parents and all
7 others acting in concert or privity with any of them from infringing, inducing the
8 infringement of, or contributing to the infringement of the '278 Patent;

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

11 H. Awarding to Planet Blue the damages to which it is entitled under 35
12 U.S.C. § 284 for Valve's past infringement and any continuing or future
13 infringement up until the date Valve is finally and permanently enjoined from
14 further infringement, including both compensatory damages and treble damages
15 for willful infringement;

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

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

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

21 L. Awarding Planet Blue such other and further relief in law or in equity
22 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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