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 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 Tecmo Koei America Corporation and  
 Tecmo Koei Games Co., Ltd.

22 Defendants.

**CASE No. SACV13-01872 GW  
 (FFMx)**

**FIRST AMENDED COMPLAINT  
 FOR PATENT INFRINGEMENT**

**JURY TRIAL DEMANDED**

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1                   **FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

2                   McRo, Inc., d.b.a. Planet Blue (“Planet Blue”), brings this First Amended  
3                   Complaint for patent infringement against Tecmo Koei America Corporation  
4                   (“Tecmo”) (identified as Tecmo Koei Corporation in the original Complaint) and  
5                   Tecmo Koei Games Co., Ltd. (“Tecmo Games”), (identified as Tecmo Koei  
6                   Holdings Co., Ltd. in the original Complaint)<sup>1</sup> and hereby states as follows:

7                   **NATURE OF THE ACTION**

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

13                  **PARTIES**

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

19                  2.           Upon information and belief, Defendant Tecmo Koei Games Co.,  
20                  Ltd. is a corporation operating and existing under the laws of Japan, with its  
21                  principal place of business at 1-18-12 Minowa-cho, Kouhoku-ku, Yokohama 223-  
22                  8503, Japan. Tecmo Koei Games Co., Ltd. is engaged in the business of  
23                  publishing computer and/or video games.

24                  3.           Upon information and belief, Defendant Tecmo Koei America  
25                  Corporation is a subsidiary of Tecmo Games, and a corporation existing under the  
26                  laws of California, with its principal place of business at 1818 Gilbreth Rd., Suite  
27

28                  \_\_\_\_\_  
<sup>1</sup> Tecmo Koei Corporation and Tecmo Koei Holdings Co., Ltd. were erroneously named in the original Complaint.

1 235, Burlingame, California. Tecmo Koei America Corporation is engaged in the  
2 business of developing and publishing computer and/or video games.

3 **JURISDICTION AND VENUE**

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

7 5. Upon information and belief, this Court has personal jurisdiction over  
8 Tecmo and Tecmo Games because Tecmo and Tecmo Games are doing and have  
9 done substantial business in this District, including business relating to the  
10 advertising, sale, and distribution for sale of computer and/or video games made  
11 using the methods claimed in the Patents-in-Suit.

12 6. Venue is proper in this judicial district as to Tecmo and Tecmo Games  
13 pursuant to 28 U.S.C. §§ 1391 and 1400(b), because Tecmo and Tecmo Games are  
14 subject to personal jurisdiction in this judicial district and have committed acts of  
15 infringement in this judicial district.

16 **FACTUAL BACKGROUND**

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

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

28 9. Mr. Rosenfeld filed patent application no. 08/942,987 (the “’987

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1 Application”), that would eventually issue as the ’576 Patent, relating to a method  
2 for performing and animating lip synchronization and facial expressions on three-  
3 dimensional animated characters on October 2, 1997.

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

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

12 12. On January 25, 2013, Planet Blue, through its attorneys, sent a letter to  
13 Tecmo notifying them of their infringement of the ’576 and ’278 Patents.

14 13. After receiving no response to Planet Blue's January 25, 2013 letter,  
15 on May 7, 2013, Planet Blue, through its attorneys, sent a second letter to Tecmo  
16 again notifying them of their infringement of the ’576 and ’278 Patents.

17 14. Each of the Patents-in-Suit is valid and enforceable.

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

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

26 17. Upon information and belief, Tecmo and Tecmo Games, directly or  
27 through intermediaries (including distributors, retailers, and others), have acted  
28 and are acting to develop, publish, manufacture, import, ship, distribute, offer for

1 sale, sell, and/or advertise (including the provision of an interactive web page) the  
2 following computer and/or video games identified in **Exhibit C**. These computer  
3 and/or video games identified in Exhibit C have been and continue to be  
4 purchased by consumers in the United States, the State of California, and the  
5 Central District of California.

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

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

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

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

1 the doctrine of equivalents. Tecmo has had knowledge of the '576 Patent since at  
2 least as early as January 25, 2013 as a result of correspondence between Planet  
3 Blue's attorneys and employees at Tecmo, and Tecmo's actions constitute knowing  
4 and willful infringement of the '576 Patent.

5 21. Tecmo and Tecmo Games, by way of their infringing activities, have  
6 caused and continue to cause Planet Blue to suffer damages in an amount to be  
7 determined at trial. Planet Blue has no adequate remedy at law against Tecmo and  
8 Tecmo Games' acts of infringement and, unless Tecmo and Tecmo Games are  
9 enjoined from their infringement of the '576 Patent, Planet Blue will suffer  
10 irreparable harm.

11 22. Planet Blue is in compliance with the requirements of 35  
12 U.S.C. § 287.

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

14 23. Planet Blue realleges and incorporates by reference paragraphs 1-22.

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

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1 least as early as January 25, 2013 as a result of correspondence between Planet  
2 Blue's attorneys and employees at Tecmo, and Tecmo's actions constitute knowing  
3 and willful infringement of the '278 Patent.

4 25. Tecmo and Tecmo Games, by way of their infringing activities, have  
5 caused and continue to cause Planet Blue to suffer damages in an amount to be  
6 determined at trial. Planet Blue has no adequate remedy at law against Tecmo and  
7 Tecmo Games' acts of infringement and, unless Tecmo and Tecmo Games are  
8 enjoined from their infringement of the '278 Patent, Planet Blue will suffer  
9 irreparable harm.

10 26. Planet Blue is in compliance with the requirements of 35  
11 U.S.C. § 287.

12 **PRAYER FOR RELIEF**

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

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

17 B. Holding that Tecmo and Tecmo Games have willfully infringed the  
18 '576 Patent, either literally or under the doctrine of equivalents, under 35 U.S.C. §  
19 271(g);

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

22 D. Holding that Tecmo and Tecmo Games have willfully infringed the  
23 '278 Patent, either literally or under the doctrine of equivalents, under 35 U.S.C. §  
24 271(g);

25 E. Permanently enjoining Tecmo and Tecmo Games, and their officers,  
26 directors, agents, servants, employees, affiliates, divisions, branches, subsidiaries,  
27 parents and all others acting in concert or privity with any of them from infringing,  
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inducing the infringement of, or contributing to the infringement of the '576 Patent;

F. Permanently enjoining Tecmo and Tecmo Games, and their officers, directors, agents, servants, employees, affiliates, divisions, branches, subsidiaries, parents and all others acting 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 Tecmo and Tecmo Games' past infringement and any continuing or future infringement up until the date Tecmo and Tecmo Games 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.



