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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

McRO, Inc., dba Planet Blue,

Plaintiff,

v.

Namco Bandai Games America, Inc., et al.

Defendants.

Case No. 12-cv-10322-GW (FFMx)

Honorable George H. Wu

**THIRD AMENDED COMPLAINT
AGAINST ACTIVISION
PUBLISHING, INC. AND
BLIZZARD ENTERTAINMENT,
INC.**

JURY TRIAL DEMANDED

1 McRO, Inc., d.b.a. Planet Blue,
 2 Plaintiff,
 3 v.
 4 Activision Publishing, Inc. and Blizzard
 5 Entertainment, Inc.,
 6 Defendants.

CONSOLIDATED WITH:
14-cv-00336-GW (FFMx)
 12-cv-10327-GW (FFMx)
 12-cv-10329-GW (FFMx)
 12-cv-10331-GW (FFMx)
 12-cv-10333-GW (FFMx)
 12-cv-10335-GW (FFMx)
 12-cv-10336-GW (FFMx)
 12-cv-10337-GW (FFMx)
 12-cv-10338-GW (FFMx)
 12-cv-10340-GW (FFMx)
 12-cv-10341-GW (FFMx)
 12-cv-10342-GW (FFMx)
 13-cv-01870-GW (FFMx)
 14-cv-00332-GW (FFMx)
 14-cv-00352-GW (FFMx)
 14-cv-00358-GW (FFMx)
 14-cv-00383-GW (FFMx)
 14-cv-00417-GW (FFMx)

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THIRD AMENDED COMPLAINT FOR PATENT INFRINGEMENT

McRO, Inc., d.b.a. Planet Blue (“Planet Blue”), brings this Third Amended Complaint for patent infringement against Activision Publishing, Inc. (“Activision”) and Blizzard Entertainment, Inc. (“Blizzard”) (collectively “Defendants”), 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 Marina del Rey¹, 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 Activision is a corporation operating and existing under the laws of Delaware, with its principal place of business at 3100 Ocean Park Boulevard, Santa Monica, California 90405. Upon further information and belief, Activision is engaged in the business of developing and publishing computer and/or video games.

3. Upon information and belief, Defendant Blizzard is a corporation operating and existing under the laws of Delaware, with its principal place of business at 16215 Alton Parkway, Irvine, California 92618.

JURISDICTION AND VENUE

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

¹ Until recently, Planet Blue had its principal place of business in Santa Monica, California.

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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 Defendants because Defendants are located in California, are doing and has done
5 substantial business in this District, including business relating to the advertising,
6 sale, and distribution for sale of computer and/or video games made using the
7 methods claimed in the Patents-in-Suit and has consented to this Court’s
8 jurisdiction by virtue of its motion to transfer this action to this Court.

9 6. Venue is proper in this judicial district as to Defendants pursuant to 28
10 U.S.C. §§ 1391 and 1400(b), because the Defendants are subject to personal
11 jurisdiction in this judicial district, has committed acts of infringement in this
12 judicial district, and has consented to this Court’s jurisdiction by virtue of its
13 motion to transfer this action to this Court.

14 **FACTUAL BACKGROUND**

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

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

26 9. Mr. Rosenfeld filed patent application no. 08/942,987 (the “’987
27 Application”), what would eventually issue as the ’576 Patent, relating to a method
28 for performing and animating lip synchronization and facial expressions on three-

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1 dimensional animated characters on October 2, 1997.

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

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

10 12. At least as early as January 2008, Mr. Rosenfeld had email and
11 telephonic communications with representatives of Activision, including Mary
12 Tuck, with regard to entering into a licensing agreement for the Patents-in-Suit.

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

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

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

22 16. Upon information and belief, Defendants, directly or through
23 intermediaries (including distributors, retailers, and others), have acted and are
24 acting to develop, publish, manufacture, import, ship, distribute, offer for sale, sell,
25 and/or advertise (including the provision of an interactive web page) the following
26 computer and/or video games identified in **Exhibit C**. These computer and/or
27 video games identified in Exhibit C have been and continue to be purchased by
28

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1 consumers in the United States, the State of California, and the Central District of
2 California.

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

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

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

14 19. Upon information and belief, Defendants, as part of the creation and
15 development of the computer and/or video games identified in Exhibit C, have
16 used and continue to use software processes in the United States for automatically
17 performing and animating character lip synchronization using the phonetic
18 structure of the words to be spoken by the characters and have made, used, offered
19 to sell, sold, and/or imported, and continue to make, use, offer to sell, sell, and/or
20 import, computer and/or video games created using those processes in the United
21 States, including this judicial district. By using the aforementioned software
22 processes, Defendants have directly infringed the '576 Patent under 35 U.S.C.
23 § 271(a), either literally or under the doctrine of equivalents. By using, offering to
24 sell, selling, and/or importing computer and/or video games created using the
25 aforementioned software processes, Defendants have been and are now infringing
26 the '576 Patent under 35 U.S.C. § 271(g), either literally or under the doctrine of
27 equivalents. Activision has had knowledge of the '576 Patent since at least as early
28 as January 2008, as a result of correspondence and other communications between

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1 Mr. Rosenfeld and employees in Activision’s legal department in or around that
2 time, and Activision’s actions constitute knowing and willful infringement of the
3 ’576 Patent.

4 20. The Defendants, by way of their infringing activities, have caused
5 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
7 Defendants’ acts of infringement and, unless the Defendants are enjoined from
8 their infringement of the ’576 Patent, Planet Blue will suffer irreparable harm.

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

11 **COUNT II: INFRINGEMENT OF THE ’278 PATENT**

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

13 23. Upon information and belief, Defendants, as part of the creation and
14 development of the computer and/or video games identified in Exhibit C, have
15 used and continue to use software processes in the United States for automatically
16 performing and animating character lip synchronization using the phonetic
17 structure of the words to be spoken by the characters and have made, used, offered
18 to sell, sold, and/or imported, and continue to make, use, offer to sell, sell, and/or
19 import, computer and/or video games created using those processes in the United
20 States, including this judicial district. By using the aforementioned software
21 processes, Defendants have directly infringed the ’278 Patent under 35 U.S.C. §
22 271(a), either literally or under the doctrine of equivalents. By using, offering to
23 sell, selling, and/or importing computer and/or video games created using the
24 aforementioned software processes, Defendants have been and are now infringing
25 the ’278 Patent under 35 U.S.C. § 271(g), either literally or under the doctrine of
26 equivalents. Activision has had knowledge of the ’278 Patent since at least as early
27 as January 2008, as a result of correspondence and other communications between
28 Mr. Rosenfeld and employees in Activision’s legal department in or around that

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1 time, and Activision’s actions constitute knowing and willful infringement of the
2 ’278 Patent.

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

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

10 **PRAYER FOR RELIEF**

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

13 A. Holding that the Defendants have infringed the ’576 Patent, either
14 literally or under the doctrine of equivalents, under 35 U.S.C. § 271(a);

15 B. Holding that the Defendants have infringed the ’576 Patent, either
16 literally or under the doctrine of equivalents, under 35 U.S.C. § 271(g);

17 C. Holding that the Defendants have infringed the ’278 Patent, either
18 literally or under the doctrine of equivalents, under 35 U.S.C. § 271(a);

19 D. Holding that the Defendants have infringed the ’278 Patent, either
20 literally or under the doctrine of equivalents, under 35 U.S.C. § 271(g);

21 E. Holding that Activision’s infringement is willful.

22 F. Permanently enjoining the Defendants and their officers, directors,
23 agents, servants, employees, affiliates, divisions, branches, subsidiaries, parents
24 and all others acting in concert or privity with any of them from infringing,
25 inducing the infringement of, or contributing to the infringement of the ’576
26 Patent;

27 G. Permanently enjoining the Defendants and their officers, directors,
28 agents, servants, employees, affiliates, divisions, branches, subsidiaries, parents

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

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

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

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

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

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

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

18 **DEMAND FOR JURY TRIAL**

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

21 Dated: July 9, 2014

Respectfully submitted,

22 MISHCON DE REYA NEW YORK LLP

23
24 By: /s/ Mark S. Raskin
Mark S. Raskin,

25
26 RUSS AUGUST & KABAT
Marc A. Fenster
Irene Y. Lee

27
28 Attorneys for Plaintiff
McRO, Inc., d.b.a. Planet Blue