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11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14

15 BlackBerry Limited, a Canadian Corporation

CASE NO. 3:14-cv-23

16
17 Plaintiffs,

**BLACKBERRY LIMITED'S
COMPLAINT FOR PATENT
INFRINGEMENT, TRADE DRESS
INFRINGEMENT, DILUTION, UNFAIR
BUSINESS PRACTICES, AND UNJUST
ENRICHMENT**

18 vs.

19 Typo Products LLC, a Nevada Limited
Liability Company

DEMAND FOR JURY TRIAL

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21 Defendant.
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1 Plaintiff BlackBerry Limited (“BlackBerry”) complains against Typo Products LLC
2 (“Typo”) as follows:

3 **INTRODUCTION**

4 1. BlackBerry revolutionized the mobile communications industry. Its innovative,
5 cutting-edge products changed the way millions of people around the world connect, converse,
6 and share digital information.

7 2. BlackBerry was founded in 1984 in Waterloo, Ontario by two engineering students,
8 Mike Lazaridis and Douglas Fregin. In its early years, the company—then named Research In
9 Motion (“RIM”)—focused its inventive energies on wireless data transmission.

10 3. From its modest beginnings more than 30 years ago, BlackBerry has gone on to
11 offer a portfolio of award-winning products, services, and embedded technologies to tens of
12 millions of individual consumers and organizations around the world, including governments,
13 educational institutions, and over 90% of Fortune 500 companies. By transforming the way
14 people communicate, BlackBerry laid a foundation for today’s multibillion-dollar modern
15 smartphone industry.

16 4. BlackBerry has since been recognized as a leader in the design and the ergonomic
17 aspects of mobile handheld devices. In particular, BlackBerry has devoted substantial resources
18 and research efforts to the development of a critical aspect of a mobile device’s user interface –
19 the keyboard. BlackBerry’s physical keyboard designs have been recognized by the press and
20 public as “iconic” and a significant market differentiator.

21 5. BlackBerry’s innovations in keyboard design have given rise to broad intellectual
22 property rights, including design patents, utility patents, and trade dress protection.

23 6. Typo, however, has promoted and announced the imminent release of the Typo
24 iPhone keyboard case (hereinafter “Typo Keyboard product”) – an external case for the Apple
25 iPhone 5/5s with an integrated physical keyboard. But instead of developing its own keyboard
26 design, Typo chose to copy BlackBerry’s iconic keyboard design as embodied in, among others,
27 BlackBerry’s Q10 smartphone, seeking to trade on BlackBerry’s commercial recognition and
28 goodwill.

1 7. By this action, BlackBerry seeks to put an end to Typo's unlawful conduct and to
2 obtain recompense for the harm that BlackBerry has suffered.

3 **THE PARTIES**

4 8. BlackBerry Limited is a Canadian company with its principal place of business at
5 2200 University Avenue East, Waterloo, Ontario, Canada N2K 0A7. BlackBerry has offices in
6 Northern California, including at 2000 Bridge Parkway, Redwood City, CA 94065.

7 9. On information and belief, Typo Products LLC is a Nevada limited liability
8 company with a principal place of business at 1100 Glendon Avenue, Suite 925, Los Angeles, CA
9 90024. Typo operates and/or owns the website located at <http://typokeyboards.com/>.

10 **JURISDICTION AND VENUE**

11 10. This Court has subject matter jurisdiction under 15 U.S.C. §§ 1114, 1125, and 28
12 U.S.C. §§ 1331, 1338(a), 1338(b) and 1367.

13 11. This Court has supplemental jurisdiction over the state law claims under 28 U.S.C.
14 § 1367, in that the facts underlying the state law claims are so related to the patent and trademark
15 claims that they form part of the same case or controversy under Article III of the United States
16 Constitution.

17 12. Defendant Typo is subject to personal jurisdiction in this Court because, *inter alia*,
18 and upon information and belief, Typo has its principal place of business and office in California
19 and directly and through agents regularly does, solicits and transacts business in the Northern
20 District of California and elsewhere in the state of California, including through its website at
21 <http://typokeyboards.com/>. In particular, Typo has committed and continues to commit acts of
22 infringement in violation of 35 U.S.C. § 271 and 15 U.S.C. § 1125, and has offered for sale, sold,
23 marketed, and/or imported infringing products in the State of California, including in this District.
24 Typo's acts cause injury to BlackBerry, including within this District.

25 13. Venue is proper in this District under the provisions of 28 U.S.C. § 1391(b)(2),
26 because a substantial part of the events or omissions giving rise to the claims occurred in this
27 judicial district.

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INTRADISTRICT ASSIGNMENT

14. Because this action is an Intellectual Property Action within the meaning of Civil Local Rule 3-2(c), the action is to be assigned on a district-wide basis.

FACTS COMMON TO ALL CLAIMS

BlackBerry’s Innovation and Industry Recognition

15. BlackBerry is a global leader in the mobile communications industry. Through its significant investment in research and development over the past 30 years, BlackBerry has developed innovative, cutting-edge technologies that have changed the face of telecommunications.

16. In the late 1990s, BlackBerry began to release a series of game-changing handheld mobile devices with physical keyboards that enabled users to send and receive email and messages on the go, without needing to be tethered to a modem or a desktop computer. The innovative nature of the 1998 RIM 950 Wireless Handheld, for example, was instantly recognized, garnering both an Editor’s Choice Award from CNET and Andrew Seybold’s Outlook Award. In particular, the press praised the RIM 950’s keyboard for its advanced ergonomic features, including an easy-to-type-on keyboard layout despite the device’s miniature size.

17. In 2002, BlackBerry released the BlackBerry 6710 and 6720 – the first BlackBerry devices capable of both sending emails and making phone calls. The next year, BlackBerry introduced smartphone models that added built-in audio hardware and color screens.

18. Since those first smartphones, BlackBerry has continued to offer handheld wireless products incorporating its distinctive keyboard designs, including the 7000 series and 8000 series, as well as the Electron, Curve, and Tour products.

19. In 2008, BlackBerry introduced the first of its Bold line of smartphones, the 9000. The Bold 9000 featured an updated housing design, more robust software, and a ground-breaking physical keyboard with keys having sculpted surfaces specially designed to have a distinctive visual appearance while being optimized for thumb-typing. This unique and distinctive keyboard was known within BlackBerry as an ergonomic surface keyboard, or “Ergo Surf” for short. The Bold 9000 is pictured below.

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20. In addition to the look of the sculpted keys, the Bold featured several other design elements that have become uniquely associated with BlackBerry and its smartphone products.

21. For example, the Bold featured the use of curved bars (referred to as “frets”) above each row of keys. Each of the keys in the top three rows is a roughly square shape, and arranged like the keys on a piano, without any significant space or material between them horizontally. The surface of each key has a sculpted curve on the side closer to the vertical center line. Further, the bottom row of keys is designed so that, instead of being roughly square in shape, they are roughly rectangular and have curved bottom edges. Taken together, the bottom row of keys echoes the curvature of the bottom of the device.

22. The distinctive look of the BlackBerry Bold was designed to reinforce the impression that the Bold 9000 was a high-end mobile device, and to create an emotional appeal that makes the design more approachable than a sea of multiple buttons and keys.

23. These key design elements of the Ergo Surf keyboard have been used in every BlackBerry flagship device since 2008, including the Tour, Style, Torch, and Bold Touch. Several of these examples are shown below.



13 24. More recently, in June 2013, BlackBerry released the Q10, the latest iteration of
14 its wireless, keyboard-based products. The Q10 incorporates both a modern touch-screen and the
15 iconic BlackBerry physical keyboard. The Q10's physical keyboard continues to incorporate bars
16 above the rows of keys having the distinctive sculpted appearance of the thumb-optimized ergo-
17 surf design that was first introduced with the Bold 9000, as can be seen in the following image.



1 25. Each successive iteration of BlackBerry’s wireless devices has received industry
2 praise and awards, particularly for its keyboard layout and design. As CNET noted, “the keyboard
3 is arguably the star of any BlackBerry product.”

4 26. As a result of its innovative and distinctive keyboard designs, BlackBerry’s
5 devices have achieved overwhelming commercial success, and BlackBerry’s physical keyboard
6 has become uniquely associated with the BlackBerry name.

7 27. BlackBerry’s smartphones with physical keyboards have been advertised
8 extensively throughout the United States through virtually every type of media, including
9 television, magazines and other publications, newspapers, and the Internet. The vast majority of
10 these advertisements focus on the distinctive BlackBerry keyboard design.

11 28. BlackBerry’s smartphones with physical keyboards have also received significant
12 unsolicited coverage in the media, and reviewers and analysts have praised the BlackBerry
13 keyboard as the standard by which all other such products are judged. GSMA – the largest and
14 most well known association of mobile operators – recognized BlackBerry’s keyboard devices as
15 “chang[ing] the face of corporate communication.” Business Insider recognized BlackBerry as
16 “the best at making keyboard phones,” calling the Q10 in particular the “best keyboard phone you
17 can buy.” Similarly, in praising the BlackBerry Q10’s keyboard, the well known New York
18 Times technology columnist David Pogue remarked that “no phone on the market offers a better
19 combination of speed and accuracy for entering text.” In 2013, Thomson Reuters named
20 BlackBerry one of the World’s Top 100 Most Innovative Organizations, based largely on the
21 number of “important patents [BlackBerry has], mainly for its popular keyboard.”

22 29. BlackBerry’s handheld devices – and their keyboards – have garnered widespread
23 industry acclaim for both their unique design and their performance. BlackBerry and its keyboard
24 products have garnered dozens of industry awards, including the GSMA Chairman’s Award,
25 InfoWorld Magazine’s Product of the Year Award, PC World’s World Class Award, the Network
26 Industry Award for Best New Mobile Communications Product, the BusinessWeek Best Product
27 of the Year award, and PC Magazine’s Best of the Year Award.

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1 **BlackBerry's Utility Patents**

2 30. On December 8, 2009, the USPTO issued U.S. Patent No. 7,629,964 titled "Hand-
3 Held Electronic Device With A Keyboard Optimized For Use With The Thumbs" (hereinafter the
4 "'964 patent"). This patent names Jason Griffin, John Holmes, Mike Lazaridis, Herb Little, and
5 Harry Major, all of Canada, as inventors, and identifies RIM as the assignee. A true and correct
6 copy of the '964 patent is attached hereto as **Exhibit A**.

7 31. On April 24, 2012, the USPTO issued U.S. Patent No. 8,162,552 titled "Ramped-
8 Key Keyboard for a Handheld Mobile Communication Device (hereinafter the "'552 patent").
9 This patent names Roman Rak, Jason Griffin, and Norman Ladouceur, all of Canada, as inventors,
10 and identifies RIM as the assignee. A true and correct copy of the '552 patent is attached hereto as
11 **Exhibit B**.

12 32. BlackBerry is the owner of all right, title, and interest in and to the '964 and '552
13 patents with the full and exclusive right to bring suit to enforce each patent, including the right to
14 recover for past infringement.

15 **BlackBerry's Design Patent**

16 33. On July 9, 2013, the USPTO issued U.S. Patent No. D685,775 titled "Handheld
17 Electronic Device" (hereinafter the D'775 patent). This patent names Joseph Michael Hofer, Todd
18 Andrew Wood, Di Tao, Roman Rak, Anders Fahrendorff, Cortez Corley, Ingve Holmung, and
19 Alison Phillips, all of Canada, as inventors, and identifies RIM as the assignee. The only portion
20 of the device shown in the D'775 patent that is claimed is the keyboard design set out in solid
21 lines. A true and correct copy of the D'775 patent is attached hereto as **Exhibit C**.

22 34. BlackBerry is the owner of all right, title, and interest in and to the D'775 patent
23 with the full and exclusive right to bring suit to enforce this patent, including the right to recover
24 for past infringement.

25 **BlackBerry Keyboard Trade Dress**

26 35. Through the extensive and consistent advertising, promotion, and publicity of the
27 BlackBerry ergo-surf keyboard devices, BlackBerry has obtained and holds trade dress protection
28 in the design and appearance of those devices.

1 36. The following non-functional elements of the design of BlackBerry’s keyboard
2 devices comprise some of the product configuration trade dress at issue in this case (the
3 “BlackBerry Keyboard Trade Dress”):

- 4 • a keyboard with an overall symmetrical design around the vertical
5 center line, comprising several horizontal dividing bars above rows of
6 sculpted keys, the last of which is rounded on the bottom edge;
- 7 • several horizontal bars in contrasting color and finish set above
8 horizontal rows of keys;
- 9 • several top rows of roughly square shaped keys having little horizontal
10 space between them;
- 11 • a bottom row of roughly rectangular shaped keys having curved bottoms
12 edges and little horizontal space between them;
- 13 • keys with planar areas away from the vertical center line of the
14 keyboard and sculpted curves closer to the center line;
- 15 • one larger rectangular key in the center of the bottom row having a u-
16 shaped planar area; and
- 17 • keys having distinct lettering or graphical icons printed on the surface.

18 37. These elements of the BlackBerry Keyboard Trade Dress are distinctive and serve
19 to identify BlackBerry as the source of the BlackBerry products. BlackBerry has made substantial
20 sales in the United States of devices with the BlackBerry Keyboard Trade Dress. BlackBerry, and
21 its carrier partners, have spent substantial money and resources, to advertise, market, and promote
22 devices with the BlackBerry Keyboard Trade Dress through virtually every type of digital,
23 broadcast, online, and print media in the United States. Devices with the BlackBerry Keyboard
24 Trade Dress also have received significant unsolicited coverage in digital, broadcast, online, and
25 print media around the United States. As a result of longstanding and widespread commercial use
26 and success, as well as advertising, publicity, and promotion, the public has come to recognize the
27 shape and design of the BlackBerry Keyboard Trade Dress, which is nonfunctional and distinctive,
28 and to associate it with a single source, namely, BlackBerry.

1 **Typo's Infringing Products**

2 38. Typo has offered for sale, sold, used, and/or marketed in the United States, and/or
3 imported into the United States, its Typo Keyboard product, which infringes BlackBerry's
4 intellectual property rights in its distinctive keyboard design. The Typo Keyboard is shown below
5 on its own and with an Apple iPhone 5S inserted into the case.



21 39. Instead of developing its own keyboard design, Typo chose to copy BlackBerry's
22 innovative style and design, including the keyboard layout and the surface shaping of the keys.

23 40. Numerous industry and analyst reviews have noted Typo's blatant copying,
24 stating:

- 25
- 26 • "The keyboard itself looks like it's been lifted straight from a BlackBerry Q10 (They say imitation is the sincerest form of flattery)...";
 - 27 • "The Typo Keyboard That Turns An iPhone Into A BlackBerry";
 - 28 • "The Bluetooth case turns an Apple handset into a makeshift BlackBerry Q10";

- 1 • “ iPhone users can now get a similar look and feel with the new Typo Keyboard Case
2 that effectively turns their beloved smartphone into something that resembles the
3 BlackBerry Q10 (and many other BlackBerry devices)”;
- 4 • “Typo Keyboard Brings Physical BlackBerry Keyboard to iPhone”;
- 5 • “Typo Keyboard Case: Hands-on with case that turns your iPhone into a BlackBerry”;
6 and
- 7 • “The keyboard has the look and feel of a classic BlackBerry, right down to the beveled
8 keys.”

9 41. Indeed, Typo has acknowledged its copying of BlackBerry’s iconic keyboard. On
10 or about December 9, 2013, Typo’s co-founder Ryan Seacrest was interviewed by CNN about the
11 Typo Keyboard (<http://www.cnn.com/2013/12/06/tech/mobile/ryan-seacrest-iphone-startup/>):

12 Interviewer: So it’s the best thing about a BlackBerry, within the iPhone.

13 Ryan Seacrest: That’s kind of how this came to fruition.

14 42. Typo had many design options for the keyboard in its product which would not
15 embody the same combination of elements of the BlackBerry patents or the BlackBerry Keyboard
16 Trade Dress. Instead, Typo chose to infringe BlackBerry’s patents and trade dress through the
17 design and promotion of its Typo Keyboard product, and it did so willfully to trade upon the
18 goodwill that BlackBerry has developed in connection with BlackBerry’s family of mobile
19 products with physical keyboards.

20 **Infringement of BlackBerry’s Utility Patents**

21 43. The Typo Keyboard product infringes the BlackBerry ‘964 and ‘552 patents and
22 thereby unlawfully provides Typo with unique functionality for its products that was the result of
23 BlackBerry’s investment and innovation.

24 44. Typo has advertised the infringing Typo Keyboard product and has made it
25 available for pre-order on its website at the following page:
26 <http://typokeyboards.myshopify.com/products/typo-iphone-keyboard-case/>.

27 45. On the Typo website, there are two methods of pre-order available, one through
28 the Typo website and one through online retailer Amazon. In both methods, payment is charged
upon placement of the pre-order, rather than upon shipment of the device. Shipping is advertised

1 as set to begin in January 2014.

2 46. The Typo website further states that “[b]oth the hardware and software for the
3 Typo Keyboard™ were designed and engineered in California & Utah.” And Typo’s CEO
4 boasted on his LinkedIn account that Typo distributed samples of the product for use to over a
5 hundred testers.

6 47. Typo has neither sought nor obtained authorization from BlackBerry to incorporate
7 BlackBerry’s patented technology into the Typo Keyboard product (or any other product), or to
8 make, use, sell, or offer to sell the infringing Typo Keyboard in the United States (including
9 without limitation as identified above).

10 48. Typo similarly does not have authorization from BlackBerry to import the
11 infringing Typo Keyboard into the United States. The Typo website states that the Typo
12 Keyboard product “manufactured and assembled” in China. Thus, before any domestic pre-orders
13 can be fulfilled, it must first be imported into the United States.

14 **Infringement of BlackBerry’s Design Patent**

15 49. As shown in the three-way comparison of the BlackBerry Q10, the D’775 design
16 patent, and the Typo Keyboard product below, Typo has misappropriated BlackBerry’s patented
17 design in the accused Typo Keyboard. An ordinary observer viewing the Typo Keyboard in the
18 purchasing context would be deceived by its similarity to the D’775 patent design, and would be
19 induced to purchase the Typo Keyboard believing it was the same design as BlackBerry’s D’775
20 patent.

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14 **Infringement of BlackBerry’s Trade Dress**

15 50. Typo’s Keyboard product embodies a combination of several elements of the
16 BlackBerry Keyboard Trade Dress identified above, namely, a keyboard product configuration
17 with:

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- 19 • a keyboard with an overall symmetrical design around the vertical center line, comprising several horizontal dividing bars above rows of sculpted keys, the last row of which is rounded on the bottom edge;
 - 20 • several horizontal bars in contrasting color and finish set above the horizontal rows of keys;
 - 21
 - 22 • several top rows of roughly square shaped keys having little horizontal space between them;
 - 23
 - 24 • a bottom row of roughly rectangular shaped keys having curved bottoms edges and little horizontal space between them;
 - 25
 - 26 • keys with planar areas away from the vertical center line of the keyboard and sculpted curves closer to the center line;
 - 27
 - 28 • one larger rectangular key in the center of the bottom row having a u-shaped planar area; and

- keys having distinct lettering or graphical icons printed on the surface.

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2 51. Typo's keyboard product has caused and is likely to continue to cause confusion,
3 mistake, and deception as to the source of origin of Typo's products and is likely to falsely suggest
4 a sponsorship, connection, or association between Typo, its products, and/or its commercial
5 activities with BlackBerry. For example, the public is likely to mistakenly believe that
6 BlackBerry makes Typo's keyboard product, that BlackBerry has authorized Typo to use its
7 keyboard design, or that there is some kind of relationship between BlackBerry and Typo. In
8 addition, Typo's keyboard product is likely to dilute the distinctiveness and value of BlackBerry's
9 famous BlackBerry Keyboard Trade Dress.

10 52. One of BlackBerry's most significant distinctions in the marketplace is the design
11 of its keyboard, which stands out from all of the other mobile devices on the market.
12 BlackBerry's goodwill among consumers is uniquely tied to its keyboard design. Typo's copying
13 of BlackBerry's intellectual property rights not only allows Typo to trade on benefits from
14 BlackBerry's investment, it threatens to substantially diminish the goodwill that BlackBerry has
15 developed with consumers.

16 53. Typo's keyboard products have been marketed as a way to obtain the advantages
17 of BlackBerry's keyboard design for use with an iPhone while supplanting BlackBerry within its
18 customer base. On information and belief, for example, the co-founders of Typo, Laurence Hallier
19 and Ryan Seacrest, created the Typo Keyboard specifically to replace their BlackBerry devices
20 with a physical keyboard copied from a BlackBerry. As set forth on Typo's website:

21 For several years, many of our friends and colleagues carried two
22 phones: one for typing and correspondence and an iPhone for
23 virtually everything else. One night, we went out to dinner and both
24 had our phones on the table.

25 Two people, four phones!

26 (<http://typokeyboards.com/about-us>).

27 54. Typo's infringement of BlackBerry's utility patents and design patent and its
28 infringement and dilution of the BlackBerry Keyboard Trade Dress have damaged and irreparably

1 injured BlackBerry, and, unless Typo is preliminarily and permanently enjoined, Typo will further
2 damage and irreparably injure BlackBerry and the goodwill it has built.

3 55. Typo's infringement of BlackBerry's design patent and its infringement and
4 dilution of the BlackBerry Keyboard Trade Dress has irreparably injured the public, and, unless
5 preliminarily and permanently enjoined, will further irreparably injure the public, which has an
6 interest in being free from deception, confusion and/or mistake in the marketplace.

7 **FIRST CLAIM FOR RELIEF**

8 **(Infringement of United States Patent No. 7,629,964)**

9 56. BlackBerry incorporates and realleges paragraphs 1 through 55 of this Complaint.

10 57. Typo has infringed and continues to infringe one or more claims of the '964 Patent
11 by using, selling, and/or offering to sell in the United States, and/or importing into the United
12 States, the Typo Keyboard product in violation of 35 U.S.C. § 271.

13 **SECOND CLAIM FOR RELIEF**

14 **(Infringement of United States Patent No. 8,162,552)**

15 58. BlackBerry incorporates and realleges paragraphs 1 through 57 of this Complaint.

16 59. Typo has infringed and continues to infringe one or more claims of the '552 Patent
17 by using, selling, and/or offering to sell in the United States, and/or importing into the United
18 States, the Typo Keyboard product in violation of 35 U.S.C. § 271.

19 **THIRD CLAIM FOR RELIEF**

20 **(Infringement of United States Patent No. D685,775)**

21 60. BlackBerry incorporates and realleges paragraphs 1 through 59 of this Complaint.

22 61. Typo has infringed and continues to infringe one or more claims of the D'775
23 Patent by using, selling, and/or offering to sell in the United States, and/or importing into the
24 United States, the Typo Keyboard product in violation of 35 U.S.C. § 271.

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1 **FOURTH CLAIM FOR RELIEF**

2 **(Trade Dress Infringement)**

3 62. BlackBerry incorporates and realleges paragraphs 1 through 61 of this Complaint.

4 63. BlackBerry is the owner of all right and title to the distinctive BlackBerry
5 Keyboard Trade Dress. The BlackBerry Keyboard Trade Dress, as embodied in numerous
6 BlackBerry products, including the Bold 9000, Tour, Style, Torch, Bold Touch, and Q10, has
7 acquired secondary meaning, and is not functional.

8 64. In addition, based on extensive and consistent advertising, promotion, and sales
9 throughout the United States, the BlackBerry Keyboard Trade Dress has acquired distinctiveness
10 and enjoys secondary meaning among consumers, identifying BlackBerry as the source of these
11 products.

12 65. BlackBerry's extensive advertising, promotion, and sales of products with the
13 distinctive BlackBerry Keyboard Trade Dress have resulted in BlackBerry's acquisition of
14 valuable, legally protected rights in the BlackBerry Keyboard Trade Dress, as well as considerable
15 consumer goodwill.

16 66. The Typo Keyboard product has misappropriated the BlackBerry Keyboard Trade
17 Dress by copying a combination of several elements of that trade dress.

18 67. Typo's manufacture, promotion, and distribution of the Typo Keyboard product
19 with a product design that copies a combination of several elements of the BlackBerry Keyboard
20 Trade Dress is likely to cause confusion mistake, or to deceive the consumer as to the affiliation,
21 connection or association of Typo with BlackBerry, or to the origin, sponsorship, or approval by
22 BlackBerry of Typo's goods and services.

23 68. Typo's manufacture, promotion, and distribution of the Typo Keyboard product
24 with a product design that copies a combination of several elements of the of the BlackBerry
25 Keyboard Trade Dress enables Typo to benefit unfairly from BlackBerry's reputation and success.

26 69. Typo's actions constitute false designation of origin in violation of 15 U.S.C.
27 §1125(a).

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1 70. Typo knew of the BlackBerry Keyboard Trade Dress when it designed its
2 Keyboard product. Accordingly, Typo’s infringement has been and continues to be intentional,
3 willful and without regard to BlackBerry Keyboard Trade Dress.

4 71. BlackBerry has been and will continue to be irreparably harmed and damaged by
5 Typo’s conduct, and BlackBerry lacks an adequate remedy at law to compensate for this harm and
6 damage.

7 72. BlackBerry is informed and believes, and on that basis alleges, that Typo has
8 further obtained investment by virtue of its infringement of the BlackBerry Keyboard Trade Dress.

9 73. BlackBerry also has sustained damages as a direct and proximate result of Typo’s
10 infringement of the BlackBerry Keyboard Trade Dress in an amount to be proven at trial,
11 including Typo’s profits and/or gains of any kind resulting from its acts of infringement.

12 74. Because Typo’s actions have been willful, BlackBerry is entitled to enhanced and
13 exemplary damages, including treble its actual damages, to an award of costs, and, this being an
14 exceptional case, reasonable attorneys’ fees pursuant to 15 U.S.C. § 1117(a).

15 **FIFTH CLAIM FOR RELIEF**

16 **(Trade Dress Dilution)**

17 75. BlackBerry incorporates and realleges paragraphs 1 through 74 of this Complaint.

18 76. As alleged above, the BlackBerry Keyboard Trade Dress has acquired
19 distinctiveness in the minds of consumers and has become famous.

20 77. Typo has misappropriated the BlackBerry Keyboard Trade Dress to promote its
21 own infringing products in interstate commerce.

22 78. Typo has promoted the distinctive and famous BlackBerry Keyboard Trade Dress
23 in a manner that dilutes and is likely to dilute the distinctiveness of the BlackBerry Keyboard
24 Trade Dress by (a) diminishing the public’s association of the exclusivity of the BlackBerry
25 Keyboard Trade Dress trade dress with BlackBerry as a company, and (b) diminishing the status
26 of the BlackBerry Keyboard Trade Dress as a unique identifier of the BlackBerry brand.

27 79. Typo’s actions constitute dilution in violation of 15 U.S.C. §1125(c).

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1 80. Typo knew of the BlackBerry Keyboard Trade Dress when it designed its
2 Keyboard products. Accordingly, Typo's acts of dilution have been and continue to be
3 intentional, willful and without regard to the BlackBerry Keyboard Trade Dress.

4 81. BlackBerry has been and will continue to be irreparably harmed and damaged by
5 Typo's conduct, and BlackBerry lacks an adequate remedy at law to compensate for this harm and
6 damage.

7 82. BlackBerry is informed and believes, and on that basis alleges, that Typo has
8 obtained investment by virtue of its dilution of the BlackBerry Keyboard Trade Dress.

9 83. BlackBerry also has sustained damages as a direct and proximate result of Typo's
10 infringement of the BlackBerry Keyboard Trade Dress in an amount to be proven at trial,
11 including Typo's profits and/or gains of any kind resulting from its acts of dilution.

12 84. Because Typo's actions have been willful, BlackBerry is entitled to enhanced and
13 exemplary damages, including treble its actual damages, to an award of costs, and, this being an
14 exceptional case, reasonable attorneys' fees pursuant to 15 U.S.C. § 1117(a).

15 **SIXTH CLAIM FOR RELIEF**

16 **(Unfair Business Practices - California Business**
17 **and Professions Code § 17200, et seq.)**

18 85. BlackBerry incorporates and realleges paragraphs 1 through 84 of this Complaint.

19 86. The acts of Typo described above constitute unlawful, unfair, and fraudulent
20 business practices as defined by California Business & Professions Code § 17200, et seq.

21 87. BlackBerry has valid and protectable rights in the BlackBerry Keyboard Trade
22 Dress. The BlackBerry Keyboard Trade Dress does not serve any function other than to identify
23 BlackBerry as the source of its wireless handheld products. The BlackBerry Keyboard Trade
24 Dress is distinctive, and, through BlackBerry's long use, has come to be associated solely with
25 BlackBerry as the source of the products on which it is used.

26 88. Typo's use of its infringing trade dress is likely to cause confusion as to the source
27 of Typo's products, and is likely to cause others to be confused or mistaken into believing that that
28 BlackBerry has authorized Typo to use its keyboard design, there is a relationship between Typo

1 and BlackBerry, or that Typo's products are affiliated with or sponsored by BlackBerry. In
2 addition, Typo's keyboard product is likely to dilute the distinctiveness and value of BlackBerry's
3 famous BlackBerry Keyboard Trade Dress.

4 89. The above-described acts and practices by Typo are likely to mislead or deceive the
5 general public and therefore constitute fraudulent business practices in violation of California
6 Business & Professions Code §§ 17200, *et seq.*

7 90. The above-described acts constitute false designation of origin under 15 U.S.C. §
8 1125(a), and dilution under 15 U.S.C. § 1125(c), and are therefore unlawful acts in violation of
9 California Business & Professions Code §§ 17200, *et seq.*

10 91. Typo acted willfully and intentionally in designing its infringing trade dress, with
11 full knowledge of BlackBerry's prior rights in the distinctive BlackBerry Keyboard Trade Dress,
12 and with an intent to cause confusion or mistake or to deceive customers into believing that there
13 is an affiliation between Typo and BlackBerry or between Typo's products and BlackBerry's
14 products.

15 92. The unlawful, unfair, and fraudulent business practices of Typo described above
16 present a continuing threat to the public in that Typo continues to promote its products by
17 wrongfully trading on the goodwill of the BlackBerry Keyboard Trade Dress.

18 93. As a direct and proximate result of these acts, Typo has received, and will continue
19 to profit from, the strength of the BlackBerry Keyboard Trade Dress.

20 94. As a direct and proximate result of Typo's wrongful conduct, BlackBerry has been
21 injured in fact, and such harm will continue unless Typo's acts are enjoined by the Court.
22 BlackBerry has no adequate remedy at law for Typo's continuing violation of BlackBerry's rights.

23 95. Typo should be required to restore to BlackBerry any and all profits earned as a
24 result of their unlawful, unfair, and fraudulent business practices, or provide BlackBerry with any
25 other restitutionary relief as the Court deems appropriate.

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1 **SEVENTH CLAIM FOR RELIEF**

2 **(Unjust Enrichment)**

3 96. BlackBerry incorporates and realleges paragraphs 1 through 95 of this Complaint.

4 97. As a result of the conduct alleged herein, Typo has been unjustly enriched to
5 BlackBerry's detriment. BlackBerry seeks an accounting and disgorgement of all ill-gotten gains
6 and profits resulting from Typo's inequitable activities.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, BlackBerry prays for the following relief:

9 1. A judgment that Typo has infringed one or more claims of each of the '964, '552,
10 and D'775 patents;

11 2. An order and judgment preliminarily and permanently enjoining Typo and its
12 officers, agents, affiliates, employees, and attorneys, and all those persons acting or attempting to
13 act in concert or participation with them, from further acts of infringement of the '964, '552, and
14 D'775 patents;

15 3. A judgment awarding BlackBerry all damages adequate to compensate BlackBerry
16 for Typo's infringement of the '964, '552, and D'775 patents, including all pre-judgment and post-
17 judgment interest at the maximum rate permitted by law;

18 4. A judgment awarding BlackBerry its reasonable attorneys' fees as provided for in
19 35 U.S.C. § 285 to the extent the Court finds this case exceptional;

20 5. A judgment awarding BlackBerry all of Typo's profits as provided for in 35 U.S.C.
21 § 289, including prejudgment interest;

22 6. An order preliminarily and permanently enjoining Typo and its officers, agents,
23 affiliates, employees, and attorneys, and all those persons acting or attempting to act in concert or
24 participation with them, from: directly or indirectly infringing the BlackBerry Keyboard Trade
25 Dress, or using any other product design similar to or likely to cause confusion with the
26 BlackBerry Keyboard Trade Dress; using any false designation of origin or false description,
27 including the appearance of its Keyboard product, that can, or is likely to, lead the consuming
28 public, or individual members thereof, to believe that any goods produced, advertised, promoted,

1 marketed, provided, or sold by Typo are in any manner associated or connected with BlackBerry,
2 or are advertised, promoted, marketed, sold, licensed, sponsored, approved or authorized by
3 BlackBerry; committing any other unfair business practices directed toward obtaining for
4 themselves the business and customers of BlackBerry; and committing any other unfair business
5 practices directed toward devaluing or diminishing BlackBerry's brand or business;

6 7. Actual damages suffered by BlackBerry as a result of Typo's unlawful conduct, in
7 an amount to be proven at trial, as well as prejudgment interest as authorized by law;

8 8. Reasonable funds for future corrective advertising;

9 9. An accounting of Typo's profits as provided for in 15 U.S.C. § 1117;

10 10. A judgment trebling any damages award as provided for in 15 U.S.C. § 1117;

11 11. A judgment awarding BlackBerry its reasonable attorneys' fees as provided for in
12 15 U.S.C. § 1117 and any applicable state law;

13 12. An order pursuant to 15 U.S.C. § 1118 requiring that all materials bearing the
14 infringing BlackBerry Keyboard Trade Dress to be delivered up and destroyed, and requiring
15 Typo to withdraw from the market all infringing products and advertising and promotional
16 material displaying the infringing products;

17 13. An order directing Typo to file with the Court and serve upon BlackBerry's counsel
18 within thirty (30) days after entry of the order of injunction, a report setting forth the manner and
19 form in which Typo has complied with the injunction, including the provision relating to
20 destruction and recall of infringing products and materials;

21 14. Punitive damages pursuant to California Civil Code § 3294;

22 15. Restitutionary relief against Typo and in favor of BlackBerry, including
23 disgorgement of wrongfully obtained profits and any other appropriate relief;

24 16. Costs of suit and reasonable attorneys' fees; and
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17. Such other and further relief to which BlackBerry may show itself to be entitled, including all remedies provided for in 15 U.S.C. § 1117, Cal. Bus. & Prof. Code § 17200, *et seq.*, and under any other applicable law.

DATED: January 3, 2014

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

By /s/ Kevin P. B. Johnson
Kevin P. B. Johnson
Attorney for BlackBerry Limited

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JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), BlackBerry Limited hereby demands trial by jury of all triable issues.

DATED: January 3, 2014

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

By /s/ Kevin P. B. Johnson
Kevin P. B. Johnson
Attorney for BlackBerry Limited