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8                   UNITED STATES DISTRICT COURT

9      NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

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11    INTERSERVE, INC. dba TECHCRUNCH, a     CASE NO. 09-cv-5812 RS
     Delaware corporation, and CRUNCHPAD,
12    INC., a Delaware corporation,             **DECLARATION OF CHANDRASEKAR**
                                    **RATHAKRISHNAN IN SUPPORT OF**
13                Plaintiffs,             **OPPOSITION TO PLAINTIFFS' MOTION**
                                    **FOR PRELIMINARY INJUNCTION**
14         vs.

15    FUSION GARAGE PTE. LTD, a Singapore      Date:    May 13, 2010
     company,                              Time:    1:30 p.m.
16                                   Dept.:    Hon. Richard Seeborg
               Defendant.
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1  happen, *and the credit for what we saw today goes entirely to the Fusion Garage team. Those*

2  *guys are rock stars.*"

3       39.     Mr. Arrington's blog post of April 10, 2010 contained pictures of the web tablet

4  that Fusion Garage had created. What happened was that he took pictures of the prototype and

5  packaging in April 2009 while I was showing it to him for the first time at his office. Mr.

6  Arrington then "leaked" those pictures online. He did so by publishing these pictures to his

7  personal "posterous" account and then removing them after the pictures were picked up by other

8  sites. (Posterous is a web site that allows users to post pictures and other content.) In effect, Mr.

9  Arrington staged the leak to make it appear that TechCrunch had played a role in developing the

10  web tablet device and to affiliate TechCrunch with the web tablet that Fusion Garage had created.

11       40.     The hardware and software in what TechCrunch called Prototype C was developed

12  and designed by Fusion Garage, not TechCrunch. Prototype C was not an iteration of the previous

13  prototypes A and B. Hardware specifications were different from previous prototypes. Prototype

14  C did not even use the same processor or chipsets. Prototype B had used a VIA processor and

15  chipset while Prototype C used an Intel Atom processor. Prototype C had a capacitive touch

16  screen while Prototype B had a resistive touch screen. (Capacitive touch screens rely on the

17  electrical properties of the human body (capacitance) to detect when and where on a display the

18  user touching. Resistive touch screens, on the other hand, are composed of multiple layers that are

19  separated by thin spaces. Pressure applied to the surface of the display by a finger or stylus causes

20  the layers to touch, which completes electrical circuits and tells the device where the user is

21  touching.) The software in Prototype C was completely different than in Prototype B. Prototype

22  C contained software that Fusion Garage had developed. This software included a browser

23  operating system based off merging a Linux kernel and a webkit rendering engine. Unlike

24  Prototype B, Prototype C did not use Ubuntu. The industrial design of Prototype C also was

25  completely different than that of Prototypes A and B. Just contrasting the facts from Mr.

26  Arrington's blog posts of July 2008, and August 2008 with that of his post from April 2009 shows

27  the lack of similarities between Prototype C and other prototypes. The software demonstrations

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-9-        Case No. 09-cv5812 RS
DECLARATION OF RATHAKRISHNAN IN SUPPORT OF OPPOSITION TO PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION

1  that Mr. Arrington embedded in his posts about Prototype B and C shows a complete difference

2  between those two devices.

3       41.    I understand that Mr. Monier left TechCrunch in or about April or May 2009.

4  Notably, TechCrunch's April 2009 post regarding Prototype C omits any reference to Monier,

5  even though he was TechCrunch's consultant. I surmise that this is because he did not work on

6  Prototype C.

7       42.    TechCrunch did not contribute any source code, hardware design, software design,

8  or technology to Prototype C. "Prototype C" was a completely different product than Prototype A

9  and Prototype B.

10       43.    TechCrunch did not pay Fusion Garage any salaries or fees in connection with our

11  development of Prototype C. My understanding is that all of TechCrunch's expenses were

12  incurred up and until Prototype B, which were, in effect, for TechCrunch's own commissioned

13  experiments.

14       44.    TechCrunch did pay a vendor approximately $23,500 at Fusion Garage's request

15  for a capacitive touch screen. However, this touch screen was not eventually used in any Fusion

16  Garage product. The capacitive touch screen was not used for any public demonstrations, either.

17                  ***The Launch Prototype:  Fusion Garage's Product***

18       45.    TechCrunch posted another blog post regarding the web tablet in June 2009.

19  (http://www.techcrunch.com/2009/06/03/crunchpad-the-launch-prototype/). A true and correct

20  copy of this blog post is attached hereto as <u>Exhibit H</u>. At this stage, Fusion Garage had

21  performed, and was performing, all the design and development work related to the web tablet.

22  Fusion Garage was also still contemplating being acquired by TechCrunch, but as discussed

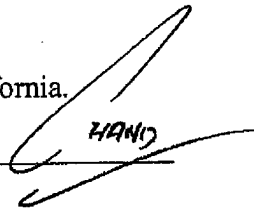23  above, the parties could never agree to terms.

24             ***My Presence at TechCrunch's Offices Was For Acquisition Discussions***

25       46.    I did not work in TechCrunch's offices on a "virtually daily basis" from April to

26  July 200 on "the joint development of the product," as TechCrunch alleges in its Complaint. I was

27  in TechCrunch's offices on numerous occasions, however. I was in California during that period

28  and met with TechCrunch staff *when required for acquisition discussions* or meetings with

1     I declare under penalty of perjury under the laws of the United States of America that the

2   foregoing is true and correct.

3     Executed this 23rd day of April 2010 at San Francisco, California.

4   _____ HAMID

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