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20 Attorneys for Defendant Fusion Garage PTE Ltd.

21 UNITED STATES DISTRICT COURT  
 22 NORTHERN DISTRICT OF CALIFORNIA  
 23 SAN FRANCISCO DIVISION

24 TECHCRUNCH, INC., a Delaware Corporation,  
 25 and CRUNCHPAD, INC., a Delaware Corporation,

26 Plaintiffs,

27 vs.

28 FUSION GARAGE PTE LTD., a Singapore  
 Company,

29 Defendant.

CASE NO. 3:09-cv-05812-RS (PSG)

**FUSION GARAGE'S ANSWER TO  
 PLAINTIFFS' AMENDED  
 COMPLAINT AND  
 COUNTERCLAIM**

**DEMAND FOR JURY TRIAL**

30 FUSION GARAGE PTE LTD., a Singapore  
 Company,

31 Counterclaimant,

32 vs.

33 TECHCRUNCH, INC., a Delaware Corporation,  
 34 and CRUNCHPAD, INC., a Delaware Corporation,

35 Counter Defendants.

1 Defendant Fusion Garage PTE Ltd. (“Fusion Garage”), answering the Amended Complaint  
2 of Plaintiffs TechCrunch, Inc. (“TechCrunch”) and CrunchPad, Inc., pleads and avers as follows.

3 **PREFATORY STATEMENT**

4 This lawsuit arises out of a failed merger and the attempt by two Michael Arrington-  
5 controlled entities—one of which, CrunchPad, Inc., is a shell that has never done business, has no  
6 assets and no capitalization—to salvage Arrington’s reputation after he found out that he was  
7 never going to be able to deliver on his promise of a “dead simple web tablet for \$200.” Arrington  
8 is using the façade of his alter-egos and this lawsuit to appropriate for himself the fruit of the time,  
9 innovation, creativity, know-how and boldness that Fusion Garage and its personnel have shown  
10 and put into its web tablet when Plaintiffs themselves did not want to take the risk.

11 Plaintiffs’ 24-page Amended Complaint is a rant of misstatements that offers a false  
12 account of the parties’ dealings with each other. Below, Fusion Garage explains the actual course  
13 of dealings between the parties and the evolution of Fusion Garage’s own web tablet device.  
14 Fusion Garage denies all the material allegations in Plaintiffs’ Amended Complaint, including the  
15 allegation that “Fusion Garage and Plaintiffs were joint venturers” and the allegation that “Fusion  
16 Garage led Plaintiffs to believe that they were collaborators working earnestly on a common joint  
17 venture.”

18 **The Parties:** Defendant Fusion Garage, a Singapore-based start-up company, was formed  
19 in February 2008 with a goal of building a browser-based operating system for mobile devices. In  
20 July 2008, Fusion Garage became aware of a very public blog post purported to have been  
21 authored by Arrington, TechCrunch’s founder, in which Arrington expressed his desire to build a  
22 “dead simple web tablet for \$200.” Arrington made a public offer and challenge, and invited  
23 public response. He never suggested that anyone who responded would become his partner or a  
24 joint venturer with him or his TechCrunch alter-ego. Intrigued by the possible synergies between  
25 its own browser-based operating system and Arrington’s web tablet idea, Fusion Garage CEO  
26 Chandrasekar Rathakrishnan traveled to San Francisco for a technology trade show that  
27 TechCrunch was hosting. At this trade show, Rathakrishnan met Arrington, who was likewise  
28

1 intrigued by the possible synergies between his web tablet idea and Rathakrishnan’s operating  
2 system. However, as Arrington has already been forced to admit in this case under oath, both men  
3 recognized from the outset that the only possible way TechCrunch and Fusion Garage could work  
4 together would be through a merger of their corporate entities. (Ex. A at 85:1-6) (“The first  
5 meeting I had with Chandra was, I believe, in – I believe in October . . . ***At that meeting, we,***  
6 ***Chandra and I, agreed that the only way to work together was a merger of the entities.***”)  
7 (emphasis added).

8 **The Early Merger Negotiations:** Plaintiffs began negotiating to acquire Fusion Garage  
9 in late 2008. On December 18, 2008, TechCrunch CEO Heather Harde sent Rathakrishnan a  
10 “Letter of Intent” to acquire Fusion Garage for a lump-sum of cash plus 8 percent stock in  
11 CrunchPad, Inc., a new shell company that TechCrunch set up to commercialize their web tablet  
12 idea. (Ex. B.) Notably, the Letter of Intent was unsigned, and included a limited “no-shop”  
13 provision, under which Fusion Garage could shop itself to other corporate suitors if no merger was  
14 struck within 60 days. This no-shop provision shows that TechCrunch did not consider Fusion  
15 Garage to be a “joint venturer” who was bound by duties of loyalty to TechCrunch. Rather,  
16 Fusion Garage was simply a potential acquisition target ***who could walk away and/or merge with***  
17 ***other companies if it did not merge with CrunchPad, Inc. within this 60-day window.***

18 Arrington and TechCrunch are not in a position to claim that they did not understand the  
19 legal significance of this writing. Arrington is a lawyer, who practiced for three years with two  
20 large corporate law firms. Although he abandoned the law as a profession relatively early on,  
21 Arrington knew enough to know that the Letter of Intent was, in fact, a clear expression that there  
22 would be no legal relationship between the parties unless they entered into a formal, written  
23 agreement to do so. In fact, Arrington, Harde, and TechCrunch contractor Louis Monier explained  
24 to Fusion Garage in no uncertain terms that Arrington could not “formalize something with  
25 [Fusion Garage] (as in signed papers) until [Plaintiffs] close the round of funding” and that the  
26 funding and merger must “happen in the right order.” (Ex. C.)  
27  
28

1           **Fusion Garage’s Early Involvement with Plaintiffs’ Web Tablet Efforts:** Ultimately,  
2 the parties did not agree to the merger terms set forth in Harde’s December 18 Letter of Intent  
3 (there was no other letter of intent presented by Arrington, Harde or TechCrunch) and the funding  
4 never came—ever. In fact, the merger talks virtually ceased in early 2009. In large part, this was  
5 due to the fact that Arrington took a sabbatical from work during this period—burned out from his  
6 work schedule and upset about a recent incident in which he had been spat upon by a heckler in  
7 Germany.

8           Nonetheless, in an effort to show its bona fides as a potential acquisition target, and for no  
9 consideration whatsoever, Fusion Garage supplied a version of its browser software to  
10 TechCrunch in January 2009 for use in “Prototype B” of the “CrunchPad”—the then-current web  
11 tablet prototype that TechCrunch had developed.<sup>1</sup> Fusion Garage offered this technology to  
12 Arrington and his alter ego under the mistaken belief—based on representations by Arrington—  
13 that Arrington and his alter-ego were so well-connected to the venture capital community that he  
14 would actually be able to arrange for an acquisition of Fusion Garage. This and similar  
15 representations by Arrington and TechCrunch were false: Arrington and Techcrunch were at all  
16 relevant times venture-capital wannabes.

17           **The Death of Plaintiffs’ Web Tablets Efforts – And Birth of Fusion Garage’s Device:**  
18 By March 2009, it became clear that Arrington’s or TechCrunch’s desire to fund a company that  
19 could actually build a web tablet was fading and that his ability to attract venture capital was  
20 illusory. Louis Monier—the consultant that Plaintiffs allegedly hired to spearhead their web tablet  
21 efforts—remarked to Rathakrishnan around this time that Plaintiffs’ web tablet project “had no  
22 legs,” that there was insufficient funding available, and that Fusion Garage should figure out what  
23 to do on its own should it wish to pursue a web tablet. (Ex. D at 259:12-17.)

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25           <sup>1</sup> As this name implies, “Prototype B” was TechCrunch’s second web tablet prototype.  
26 The first prototype, “Prototype A,” was an August 2008 device that TechCrunch created before  
27 they had ever met Fusion Garage. By Arrington’s own admission, Prototype A was a “humble  
28 and messy” device that “barely booted.”

1 Faced with the reality that Arrington and his alter-egos were more form than substance,  
2 Fusion Garage was forced to develop both the hardware and the software for its own web tablet  
3 without any acquisition by TechCrunch or Arrington’s new alter-ego, CrunchPad, Inc. During  
4 March and April 2009, Fusion Garage developed its own hardware platform, further refined its  
5 operating system, and built an entirely new web tablet prototype from scratch. Arrington  
6 contributed no technology of any kind to this development effort.

7 Fusion Garage showed the device to Arrington in April 2009 in an effort to jump-start or  
8 invigorate the lagging merger negotiations. Arrington, always the publicity whore, rushed to blog  
9 about this new device, publishing a lengthy piece about it on April 10, 2009 (Ex. E), but again  
10 failed to secure any venture capital that would support an acquisition of Fusion Garage.

11 Notably, Arrington’s April 10 post makes indisputably clear that this new device was  
12 created solely by Fusion Garage, on both the hardware and software fronts. Specifically,  
13 Arrington wrote that “this time the ID and hardware work was driven by Fusion Garage . . . *the*  
14 *credit for what we saw today goes entirely to the Fusion Garage team.*” (Ex. E) (emphasis  
15 added). As Arrington’s post pointed out, this new Fusion Garage device was vastly dissimilar  
16 from the previous “Prototype B,” which had contained Fusion Garage software but third-party  
17 hardware. (Ex. E.) Indeed, a cursory comparison between “Prototype B” and Fusion Garage’s  
18 April 2009 device shows the vast differences between the two devices:



26 Prototype B



27 Fusion Garage’s Web Tablet

28

1           **Plaintiffs' Inability to Raise Money Stalls the Merger Negotiations:** Fusion Garage's  
2 unveiling of its new device did inspire Arrington and his alter ego to make noises about an intent  
3 to continue merger negotiations. Soon, however, an uncomfortable reality—Arrington's utter  
4 inability to raise money—caused the negotiations to fail.

5           Arrington had earlier expressed his desire that CrunchPad, Inc. acquire Fusion Garage.  
6 Fusion Garage knew, however, that if Fusion Garage was to lose its independence and merely  
7 become a shareholder in CrunchPad, Inc., it needed assurances that Plaintiffs could raise sufficient  
8 capital to launch the device. Arrington and his alter ego also wanted the security of a round of  
9 financing before merging with Fusion Garage. Despite Arrington's self-proclaimed "esteemed  
10 position in the technology world," however, he and his alter egos proved surprisingly inept at  
11 raising capital.

12           As Arrington testified, he knew that Plaintiffs needed to raise roughly \$2 million to launch  
13 a web tablet under the CrunchPad name. (Ex. A at 316:9-11) ("\$2 million seemed to be roughly  
14 the amount needed to get to the point where we could start producing CrunchPads.") During the  
15 middle part of 2009, Plaintiffs repeatedly sought to raise this \$2 million from Silicon Valley  
16 venture capitalists and technology companies—but they failed to even approach this \$2 million  
17 figure. Indeed, they only received one term sheet for an amount that was an order of magnitude  
18 less than this figure. ***Arrington and his alter egos were all turned down by no less than 16***  
19 ***different venture capital funding sources.*** Notably, this rejection was not based on anything that  
20 Fusion Garage had done or said: Arrington was simply unable to establish any meaningful  
21 credibility with any of the venture capital sources he contacted about his "web tablet" idea.

22           Fusion Garage was concerned about the inability of Arrington or his alter egos to raise the  
23 necessary capital. At the same time, it began to dawn upon Arrington that, without necessary  
24 venture capital, any merger with Fusion Garage was doomed, as were the prospects of Arrington  
25 or his alter egos' participating in the development of a web tablet. Arrington has been forced to  
26 admit in this case that, at this time in 2009, he told Fusion Garage and third parties that the  
27 "CrunchPad" was dead. (Exs. F, G.)

28

1           **Fusion Garage’s Continued Work on its Web Tablet During Summer ’09:** Plaintiffs’  
2 fundraising failures may have stalled the merger talks, but they did not stall Fusion Garage’s  
3 continued development of its device during the Summer of 2009. Fusion Garage personnel  
4 worked virtually non-stop during this period to refine the device’s hardware and software.

5           Attempting to take credit for Fusion Garage’s own efforts on the hardware front, Plaintiffs’  
6 Complaint alleges that “in July 2009, Plaintiffs and Fusion Garage brought in [Plaintiffs’  
7 contractor] Brian Kindle to oversee hardware development for the CrunchPad.” (Amended  
8 Complaint ¶ 42.) This is false and known by both Arrington and TechCrunch to be false. In this  
9 case, Mr. Kindle conceded he could not claim *any* credit for the development of Fusion Garage’s  
10 hardware. Mr. Kindle was so unfamiliar with Fusion Garage’s development efforts and the  
11 relevant technology that he conceded he had no knowledge about how the CrunchPad’s prototypes  
12 evolved after he was hired in July 2009, and he could not identify something as basic as whether  
13 the final product’s form factor would be plastic or metal. In fact, Mr. Kindle was so detached  
14 from any development process that he could not even identify photographs of any version of the  
15 Fusions Garage prototype. Mr. Kindle’s utter ignorance of the device’s evolution during his  
16 tenure on the alleged CrunchPad project reflects that he made no significant contribution to the  
17 hardware of Fusion Garage’s device.<sup>2</sup>

18           **Arrington and His Alter Egos as the Worst Sort of “Partner” or “Joint Venturer”:**  
19 Contrary to Plaintiffs’ allegations that they were in a “joint venture” with Fusion Garage in which  
20 the parties owed each other fiduciary duties, Plaintiffs’ conduct and statements throughout the  
21 entire 2008-09 period make clear that they were simply in arms-length merger negotiations with  
22 Fusion Garage and did not believe that they owed Fusion Garage any fiduciary duties whatsoever.  
23 Moreover, Plaintiffs’ own statements and actions during this time period reveal their belief that  
24 any party could unilaterally walk away at any moment.

25           <sup>2</sup> Nor can Plaintiffs or their representatives claim any credit for the *software* in Fusion  
26 Garage’s device. Indeed, Mr. Arrington admitted in deposition that Fusion Garage did all the  
27 software coding dating back to the launch of “Prototype B” in January 2009. (Ex. A at 338:23-  
28 339:2.)

1 For instance, in an October 2008 pitch to potential investors, TechCrunch wrote that it  
2 planned to either acquire Fusion Garage *or hire away Fusion Garage's employees*. (Ex. H at  
3 TC00004114) (“we’re working with a Singapore startup that has developed a kick ass working  
4 prototype . . . We will either acquire the startup (*or hire the team*).”) (emphasis added). Two  
5 months later, Arrington brainstormed with TechCrunch CEO Heather Harde about how they could  
6 threaten to work with other software companies if Fusion Garage did not agree to Plaintiffs’  
7 proposed merger terms. (Ex. I) (“Tariq pitched me on using [his operating system] for the tablet.  
8 It doesn’t work for what we’re doing, but it’s a cool UI *and if FG gives us any crap about terms*  
9 *we should suggest they are our alternative*.”) (emphasis added). Even as late as August 2009,  
10 Plaintiffs’ contractor Nik Cubrilovic, proposed “poaching” Fusion Garage’s employees and letting  
11 Fusion Garage “die” as viable business strategies for Plaintiffs. (Ex. J) (“option 2 is we kill the  
12 project and fusion garage also dies . . . option 3 is we just poach his guys, run it ourselves.”) This  
13 behavior is inconsistent with the behavior of someone who truly believes they are in a joint  
14 venture with someone to whom they owe fiduciary duties.

15 But Arrington’s willingness to poach Fusion Garage’s employees was just the tip of the  
16 iceberg when it comes to conduct evincing the absence of any fiduciary duties to Fusion Garage.

17 By late August 2009, the only party that had done anything about actually contacting and  
18 working with a manufacturer for the web tablet was Fusion Garage. Arrington’s efforts at raising  
19 capital to finance an acquisition of Fusion Garage had all but failed as of mid- or late-August  
20 2009. It was during this period that Fusion Garage introduced Arrington and his alter ego  
21 TechCrunch to Pegatron Corporation, the original design and manufacturing company that Fusion  
22 Garage had contacted to discuss building the tablet. Pegatron apparently insisted that it be paid a  
23 one-time \$700,000 Non-Recurring Engineering (NRE) fee before they would begin  
24 manufacturing.

25 Arrington knew that he had no financing for the acquisition of Fusion Garage. He also  
26 knew that he had no funding to pay a \$700,000 NRE fee to Pegatron. Keenly aware of the fact  
27 that he was unable to finance either the development of the web tablet or the acquisition of Fusion  
28



1 Garage, Arrington outright threatened Pegatron that, if it did not drop the demand for a \$700,000  
2 NRE fee, TechCrunch would abandon any interest in developing the CrunchPad and Pegatron  
3 would instead have to manufacture the web tablet for Fusion Garage without TechCrunch's  
4 involvement. Or, as Pegatron confirmed a conversation it had with Arrington's hired contractor,  
5 Brian Kindle:

6 [Pegatron understands from Kindle that] if Pegatron is not willing to  
7 change current agreement and MOU (\$700K NRE / 1200K life  
8 cycle), TechCrunch will drop out of this business and stop merging  
9 Fusion Garage. Fusion Garage will not get any supporting [sic]  
from TechCrunch or certain famous business units. ***But, Fusion  
Garage may keep doing business with Pegatron by itself.***

10 (Ex. K) (emphasis added.)

11 Put simply, by the end of August 2009, Arrington and TechCrunch clearly believed that  
12 they owed no fiduciary duties to Fusion Garage and that Fusion Garage owed none to Arrington or  
13 TechCrunch, and that Fusion Garage had the option of going-it-alone in developing its own web  
14 tablet.

15 Critically, Arrington and TechCrunch concealed this email string, along with hundreds of  
16 other documents, when they applied for a preliminary injunction in this case.

17 **Fusion Garage's Mounting Doubts That Arrington Could Ever Raise the Requisite**

18 **Funding:** By the Fall of 2009, with Plaintiffs *still* incapable of raising anywhere near the \$2  
19 million it believed was required to manufacture and sell the devices, Fusion Garage began to  
20 realize that the prospects of a merger with CrunchPad, Inc. were remote. Arrington and his alter-  
21 egos had failed to come up with any meaningful capital to warrant acquisition of Fusion Garage.  
22 Fusion Garage had also performed all the work to develop its web tablet on its own, with no  
23 meaningful assistance from Arrington or his alter-egos.

24 While Fusion Garage continued to negotiate with Plaintiffs and hold out hope that their  
25 fundraising efforts would improve, it also began laying the groundwork to sell the device on its  
26 own should the prospective merger with CrunchPad, Inc. fail or never materialize. For instance,  
27 Fusion Garage internally decided that they would call their device the "JooJoo" if Arrington could  
28

1 not raise the money or develop the capital to acquire Fusion Garage. Fusion Garage registered the  
2 web address [www.thejoojoo.com](http://www.thejoojoo.com) to prepare for this contingency, and also retained  
3 McGrath/Power Public Relations to drive advertising and PR for its device should the merger  
4 negotiations fall apart.

5 Arrington and his alter-egos make much of the fact that Fusion Garage did not disclose this  
6 contingency plan to Arrington or TechCrunch. Of course, Arrington and his alter-ego also never  
7 disclosed to Fusion Garage their intention to poach Fusion Garage employees. They never  
8 disclosed to Fusion Garage the full extent of their complete and utter failure to raise venture  
9 capital for any acquisition of Fusion Garage. In fact, Arrington seemed to go out of his way not to  
10 cc anyone from Fusion Garage on emails or correspondence with venture capitalists who were  
11 rejecting Arrington right and left as a financial target.

12 Moreover, Fusion Garage was concerned that Arrington might use the TechCrunch blog to  
13 unfairly smear Fusion Garage if he knew that Fusion Garage was considering breaking off merger  
14 negotiations and launching the device on their own. After all, during their months of negotiations,  
15 Fusion Garage had significant contact with Arrington and had witnessed first-hand his mercurial  
16 temper—a temper repeatedly confirmed by Arrington’s own colleagues. (Ex. L at 334:17-335:3.)

17 Arrington has an unfortunate, disturbing, and almost pathological tendency to use the  
18 TechCrunch blog as a weapon against those whom he dislikes or those who disagree with him.  
19 For instance, when faced with a balky screen vendor for one of his early CrunchPad prototypes,  
20 Arrington had expressed his frustration to his colleagues as follows: “fuck that, bulldoze around  
21 this problem. find out who their investors are . . . *i may just trash them on techcrunch.* dicks.”  
22 (Ex. M) (emphasis added). When Pegatron refused to budge on the NRE charge, Arrington had  
23 Kindle tell Pegatron that he would drop a “hail storm of negative press” on Pegatron and  
24 otherwise use the bad press against Pegatron as “negative guns”—and to put them in his “cross-  
25 hairs”—if it did not capitulate to his desires. (Ex. N.) Fusion Garage had no desire to be likewise  
26 “trashed” on the widely-read TechCrunch blog simply for voicing its growing doubts that the  
27 merger would go through or that Arrington’s fundraising efforts would improve.

28

1           **The End of the Merger Negotiations and Fusion Garage’s Launch of the JooJoo:** By  
2 mid-November 2009, it became clear to Fusion Garage that the merger was not going to go  
3 forward. The fundraising efforts of Arrington and TechCrunch had failed miserably and  
4 repeatedly, and they no longer wanted to take the great financial risk associated with bringing the  
5 web tablet to market. Fusion Garage realized that its web tablet would never see the light of day if  
6 Fusion Garage continued to wait to be merged with CrunchPad, Inc. It was time for Fusion  
7 Garage to break off negotiations and launch its device on its own.

8           In an effort to soften the blow and avoid confrontation, Mr. Rathakrishnan wrote to Mr.  
9 Arrington on November 17 that Fusion Garage’s investors were unwilling to go through with the  
10 merger and that he had no choice but to follow their directives. In fact, Fusion Garage and its  
11 investors were on the same page by this point, and any attempt by Plaintiffs to distort this fact is  
12 grossly misinformed and is utterly ignorant of their own history of “trashing” and causing a “hail  
13 storm of negative press” to fall upon anyone who Plaintiffs believed to have crossed them. Fusion  
14 Garage formally launched its device under the “JooJoo” brand two weeks later, on December 7,  
15 2009.

16           **The Filing of This Lawsuit and Arrington’s Smear Campaign Against Fusion**  
17 **Garage:** Plaintiffs responded to the launch of the JooJoo by filing this lawsuit on December 10,  
18 2009. Given the failure of TechCrunch and Arrington to develop a web tablet or raise money to  
19 buy a company that could develop a web tablet, Fusion Garage’s decision to launch the JooJoo  
20 was the luckiest thing that could have ever have happened to them. Fusion Garage did all the  
21 work, took on all the risk, and launched a product that Arrington and TechCrunch had long lost  
22 interest in. Plaintiffs’ lawsuit enables them to seek Fusion Garage’s profits without having to take  
23 on any of the risks associated with having to run a web tablet business.

24           Even better for Arrington, this lawsuit permits him to engage in a systematic smear  
25 campaign against Fusion Garage to save face after he found out that it could not deliver on his  
26 promise of a web tablet. He now has someone to blame.

27  
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1 **INTRODUCTORY STATEMENT**

2 1. Fusion Garage denies the allegations in Paragraph 1.

3 2. Fusion Garage denies the allegations in Paragraph 2.

4 3. Fusion Garage denies the allegations in Paragraph 3.

5 4. Fusion Garage responds that the statements cherry-picked by Plaintiffs in  
6 Paragraph 4 have been taken completely out of context, considering Fusion Garage’s very real fear  
7 about Plaintiffs’ history of threatening to use the TechCrunch blog to “trash” and cause a “hail  
8 storm of negative press” to fall upon anyone who they believe to have crossed them—however  
9 unfounded. Fusion Garage denies that it was ever involved in a joint venture with Plaintiffs.  
10 Fusion Garage further denies the remaining allegations of Paragraph 4.

11 5. Fusion Garage admits that Plaintiffs purport to bring this suit to seek redress for the  
12 purported misconduct alleged in the Amended Complaint, but denies the remaining allegations in  
13 Paragraph 5.

14 **PARTIES**

15 6. Fusion Garage lacks knowledge or information sufficient to form a belief as to the  
16 truth or falsity of the allegations in Paragraph 6, and therefore denies them.

17 7. Fusion Garage lacks knowledge or information sufficient to form a belief as to the  
18 truth or falsity of the allegations in Paragraph 7, and therefore denies them.

19 8. Fusion Garage admits that it is a Singapore company with its principle place of  
20 business in Singapore. The second sentence of Paragraph 8 states a legal conclusion to which no  
21 response is required. Fusion Garage admits that Chandrasekhar Rathakrishnan is a Singapore  
22 national and is the chief executive of Fusion Garage. Fusion Garage further denies the remaining  
23 allegations of Paragraph 8.

24 **JURISDICTION**

25 9. Fusion Garage admits that this Court has original jurisdiction over the action under  
26 28 U.S.C. § 1332.

1 **VENUE**

2 10. For purposes of this action, Fusion Garage does not contest venue in the United  
3 States District Court for the Northern District of California. Fusion Garage denies the substance  
4 of the remaining allegations in Paragraph 10.

5 **INTRADISTRICT ASSIGNMENT**

6 11. Fusion Garage admits that Plaintiffs initially brought claims under the Lanham Act,  
7 for which this action was not subject to intradistrict assignment. Plaintiffs’ Lanham Act claims  
8 were dismissed in an Order by Judge Seeborg dated August 24, 2010.

9 **FACTS COMMON TO ALL CAUSES OF ACTION**

10 12. Fusion Garage lacks knowledge or information sufficient to form a belief as to the  
11 truth or falsity of the allegations in Paragraph 12, and therefore denies them.

12 13. Fusion Garage lacks knowledge or information sufficient to form a belief as to the  
13 truth or falsity of the allegations in Paragraph 13, and therefore denies them.

14 14. Fusion Garage lacks knowledge or information sufficient to form a belief as to the  
15 truth or falsity of the allegations in Paragraph 14, and therefore denies them.

16 15. Fusion Garage lacks knowledge or information sufficient to form a belief as to the  
17 truth or falsity of the allegations in the in Paragraph 15, and therefore denies them.

18 16. Fusion Garage lacks knowledge or information sufficient to form a belief as to the  
19 truth or falsity of the allegations in Paragraph 16, and therefore denies them.

20 17. Fusion Garage lacks knowledge or information sufficient to form a belief as to the  
21 truth or falsity of the allegations in Paragraph 17, and therefore denies them.

22 18. Fusion Garage lacks knowledge or information sufficient to form a belief as to the  
23 truth or falsity of the allegations in the first sentence of Paragraph 18, and therefore denies them.

24 Fusion Garage admits that Mr. Rathakrishnan meet Mr. Arrington while at TechCrunch 50.  
25 Fusion Garage lacks knowledge or information sufficient to form a belief as to the truth or falsity  
26 of the remaining allegations in the second sentence of Paragraph 18, and therefore denies them.

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1           38.     Fusion Garage states that Exhibit 13 and the quoted language speak for themselves.  
2 Fusion Garage denies Plaintiffs' characterization and interpretation of this language. Fusion  
3 Garage denies the remaining allegations in Paragraph 38.

4           39.     Fusion Garage states that Exhibit 13 and the quoted language speak for themselves.  
5 Fusion Garage denies Plaintiffs' characterization and interpretation of this language. Fusion  
6 Garage lacks knowledge or information sufficient to form a belief as to the truth or falsity of the  
7 remaining allegations in Paragraph 39, and therefore denies them.

8           40.     Fusion Garage states that Exhibit 13 and the quoted language speak for themselves.  
9 Fusion Garage denies Plaintiffs' characterization and interpretation of this language. Fusion  
10 Garage denies the remaining allegations in Paragraph 40.

11          41.     Fusion Garage denies that the parties engaged in any ongoing collaboration  
12 separate and apart from their merger talks. Fusion Garage states that Exhibit 14 and the quoted  
13 language speak for themselves. Fusion Garage denies Plaintiffs' characterization and  
14 interpretation of this language. Fusion Garage denies the remaining allegations in Paragraph 41.

15          42.     Fusion Garage admits that Mr. Rathakrishnan met Mr. Kindle at TechCrunch's  
16 offices in July 2009. Fusion Garage denies the remaining allegations in Paragraph 42.

17          43.     Fusion Garage denies the allegations in Paragraph 43.

18          44.     Fusion Garage states that Exhibit 15 and the quoted language speak for themselves.  
19 Fusion Garage denies Plaintiffs' characterization and interpretation of this language. Fusion  
20 Garage lacks knowledge or information sufficient to form a belief as to the truth or falsity of the  
21 remaining allegations in Paragraph 44, and therefore denies them.

22          45.     Fusion Garage states that Exhibit 15 speaks for itself. Fusion Garage denies  
23 Plaintiffs' characterization and interpretation of Exhibit 15. Fusion Garage denies the remaining  
24 allegations in Paragraph 45.

25          46.     Fusion Garage states that Exhibit 16 and the quoted language speak for themselves.  
26 Fusion Garage denies Plaintiffs' characterization and interpretation of this language. Fusion  
27  
28



1 Garage lacks knowledge or information sufficient to form a belief as to the truth or falsity of the  
2 remaining allegations in Paragraph 46, and therefore denies them.

3 47. Fusion Garage denies the allegations in Paragraph 47.

4 48. Fusion Garage states that the photos in Paragraph 48 speak for themselves. Fusion  
5 Garage denies Plaintiffs' characterization and interpretation of the photos. Fusion Garage denies  
6 the remaining allegations in Paragraph 48.

7 49. Fusion Garage denies the allegations in Paragraph 49.

8 50. Fusion Garage denies the allegations in Paragraph 50.

9 51. Fusion Garage states that Exhibit 17 and the quoted language speak for themselves.  
10 Fusion Garage denies Plaintiffs' characterization and interpretation this language. Fusion Garage  
11 denies the remaining allegations in Paragraph 51.

12 52. Fusion Garage admits that Fusion Garage conducted a demonstration of its web  
13 tablet at TechCrunch's offices on or about October 27, 2009, in furtherance of the still-pending  
14 merger negotiations. Fusion Garage states that Exhibit 18 speaks for itself. Fusion Garage denies  
15 the remaining allegations in Paragraph 52.

16 53. Fusion Garage states that Exhibit 19 and the quoted language speak for themselves.  
17 Fusion Garage denies Plaintiffs' characterization and interpretation of this language. Fusion  
18 Garage denies the remaining allegations in Paragraph 53.

19 54. Fusion Garage states that Exhibit 20 and the quoted language speak for themselves.  
20 Fusion Garage denies Plaintiffs' characterization and interpretation of this language. Fusion  
21 Garage denies the remaining allegations in Paragraph 54.

22 55. Fusion Garage states that Paragraph 55 contains a legal conclusion to which no  
23 response is required. Fusion Garage otherwise denies the allegations in Paragraph 55.

24 56. Fusion Garage denies the allegations in Paragraph 56, including subparagraphs (a)-  
25 (i), as well as the implication that TechCrunch had anything to do with the development of Fusion  
26 Garage's web tablet.

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1           57.     Fusion Garage admits that it rightfully claims ownership of the product that it  
2 developed on its own. Fusion Garage denies the remaining allegations in Paragraph 57.

3           58.     Fusion Garage denies the allegations in Paragraph 58, including the implication  
4 that the parties were ever in a joint venture.

5           59.     Fusion Garage states that the email reproduced in this paragraph speaks for itself.  
6 Fusion Garage denies Plaintiffs' characterization and interpretation of the email. Fusion Garage  
7 denies the remaining allegations in Paragraph 59.

8           60.     Fusion Garage states that Exhibit 21 speaks for itself and that no further response is  
9 required. Fusion Garage further denies the remaining allegations of Paragraph 21.

10          61.     Fusion Garage denies the allegations in Paragraph 61. Fusion Garage avers that  
11 Plaintiffs and their founder, Michael Arrington, have a long history of threatening to "trash"  
12 people and companies in their TechCrunch blog. Fusion Garage's fear of Plaintiffs doing the  
13 same to Fusion Garage was justified, especially considering how Plaintiffs have simultaneously  
14 with this lawsuit harassed, embarrassed, and defamed Fusion Garage in numerous blog posts.

15          62.     Fusion Garage denies the allegations in Paragraph 62.

16          63.     Fusion Garage admits that Plaintiffs' contractor Nik Cubrilovic wanted to poach  
17 Fusion Garage's personnel. Fusion Garage denies the remaining allegations in Paragraph 63.

18          64.     Fusion Garage denies the allegations in Paragraph 64.

19          65.     Fusion Garage states that Exhibit 22 and the quoted language speak for themselves.  
20 Fusion Garage denies Plaintiffs' characterization and interpretation of this language. Fusion  
21 Garage denies the remaining allegations in Paragraph 65.

22          66.     Fusion Garage states that Exhibit 23 and the quoted language speak for themselves.  
23 Fusion Garage denies Plaintiffs' characterization and interpretation of this language. Fusion  
24 Garage denies the remaining allegations in Paragraph 66.

25          67.     Fusion Garage states that Exhibit 23 and the quoted language speak for themselves.  
26 Fusion Garage denies Plaintiffs' characterization and interpretation of this language, as well as its  
27 attribution to Plaintiffs. Fusion Garage denies the remaining allegations in Paragraph 67.

28

1           68.     Fusion Garage states that Exhibit 25 and the quoted language speaks for  
2 themselves. Fusion Garage admits that it contracted with McGrath Power to assist in the launch of  
3 its web tablet. Fusion Garage lacks knowledge or information sufficient to form a belief as to the  
4 truth or falsity of the remaining allegations in Paragraph 68, and therefore denies them.

5           69.     Fusion Garage states that Exhibit 26 speaks for itself. Fusion Garage denies  
6 Plaintiffs' characterization and interpretation of Exhibit 26. Fusion Garage denies the allegation  
7 that it "secretly" planned to do anything that it was not entitled to do. Plaintiffs failed to find  
8 financing and developed cold feet with respect to the merger. Fusion Garage denies the remaining  
9 allegations in Paragraph 69.

10          70.     Fusion Garage states that Exhibit 27, the quoted language, and the McGrath Power  
11 website speak for themselves. Fusion Garage denies Plaintiffs' characterization and interpretation  
12 of this language. Fusion Garage lacks knowledge or information sufficient to form a belief as to  
13 the truth or falsity of the allegations relating to the purported McGrath Power website, and  
14 therefore denies them. Fusion Garage further denies the remaining allegations of Paragraph 70.

15          71.     Fusion Garage states that Exhibits 28 and 29 and the quoted language speak for  
16 themselves, and denies Plaintiffs' characterizations and interpretations. Fusion Garage also denies  
17 that it had any obligation to inform Plaintiffs of these facts alleged in Paragraph 71. Fusion  
18 Garage denies the remaining allegations in Paragraph 71.

19          72.     Fusion Garage states that it was under no obligation to inform Plaintiffs that  
20 "joojoo.com" was registered. Fusion Garage lacks knowledge or information sufficient to form a  
21 belief as to the truth or falsity of the remaining allegations in Paragraph 72, and therefore denies  
22 them.

23          73.     Fusion Garage states that Exhibit 30 and the quoted language speak for themselves.  
24 Fusion Garage denies Plaintiffs' characterization and interpretation because they are taken out of  
25 the context of Plaintiffs' history of threatening to use the TechCrunch.com blog to "trash" and  
26 cause a "hail storm of negative press" to fall upon anyone who does not acquiesce to their  
27 demands. Fusion Garage denies the remaining allegations of Paragraph 73.

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1           91.     Fusion Garage denies the allegations in the first sentence of Paragraph 91. Fusion  
2 Garage lacks knowledge or information sufficient to form a belief as to the truth or falsity of the  
3 remaining allegations in Paragraph 91, and therefore denies them.

4           92.     Fusion Garage denies the allegations in Paragraph 92.

5           93.     Fusion Garage denies the allegations in Paragraph 93.

6           94.     Fusion Garage denies the first sentence in Paragraph 94. Fusion Garage states that  
7 Mr. Rathakrishanan’s deposition testimony speaks for itself.

8           95.     Fusion Garage states that Exhibit 22 and the quoted language speak for themselves.  
9 Fusion Garage denies Plaintiffs’ characterization and interpretation of this language.

10          96.     Fusion Garage denies the allegations in Paragraph 96.

11          97.     Fusion Garage denies the allegations in Paragraph 97.

12          98.     Fusion Garage states that Exhibits 23, 16, 25, 38, 28, 18, 29, 20, 30, and 21 and the  
13 quoted language speak for themselves. Fusion Garage denies Plaintiffs’ characterization and  
14 interpretation of this language. Fusion Garage denies the remaining allegations in Paragraph 98.

15          99.     Fusion Garage denies the allegations in Paragraph 99.

16          100.    Fusion Garage denies the allegations in Paragraph 100.

17          101.    Fusion Garage denies the allegations in Paragraph 101.

18                   **FIRST CAUSE OF ACTION: BREACH OF FIDUCIARY DUTY**

19          102.    Fusion Garage incorporates its responses to each and every paragraph above with  
20 the same force and effect as if fully set forth herein.

21          103.    Fusion Garage denies the allegations in Paragraph 103.

22          104.    Fusion Garage denies the allegations in Paragraph 104.

23          105.    Fusion Garage denies the allegations in Paragraph 105.

24          106.    Fusion Garage denies the allegations in Paragraph 106.

25          107.    Fusion Garage denies the allegations in Paragraph 107.

26          108.    Fusion Garage denies the allegations in Paragraph 108.

27          109.    Fusion Garage denies the allegations in Paragraph 109.

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**SIXTH AFFIRMATIVE DEFENSE**

**(NO IRREPARABLE HARM)**

139. Plaintiffs' claims for injunctive relief are barred as a matter of law because Plaintiffs have not suffered any irreparable harm as a result of the acts alleged in the Amended Complaint.

**SEVENTH AFFIRMATIVE DEFENSE**

**(FAILURE TO MITIGATE)**

140. Plaintiffs' claims are barred, in whole or in part, by Plaintiffs' failure to mitigate their alleged damages.

**EIGHTH AFFIRMATIVE DEFENSE**

**(ADEQUATE REMEDY AT LAW)**

141. Plaintiffs' claims for injunctive relief are barred as a matter of law because Plaintiffs have an adequate remedy at law for any damages resulting from the actions alleged in the Amended Complaint.

**NINTH AFFIRMATIVE DEFENSE**

**(ABUSE OF PROCESS)**

142. Plaintiffs' claims are without merit and are an attempt to harass Fusion Garage and stifle free competition, such that Plaintiffs' claims constitute an abuse of process.

**TENTH AFFIRMATIVE DEFENSE**

**(NO CAUSATION)**

143. Plaintiffs' claims are barred because Plaintiffs' damages, if any, were not caused by Fusion Garage.

**ELEVENTH AFFIRMATIVE DEFENSE**

**(NO WILLFUL CONDUCT)**

144. Plaintiffs' claims for enhanced damages and an award of fees and costs against Fusion Garage have no basis in fact or law and should be denied.

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**PRAYER FOR RELIEF**

WHEREFORE, Fusion Garage respectfully requests the following relief:

1. Judgment in favor of Fusion Garage and against Plaintiffs on all of Plaintiffs’ claims asserted in the Amended Complaint;
2. That the Court grant Fusion Garage an award for reasonable attorneys’ fees and costs of suit incurred herein; and,
3. That the Court award Fusion Garage such other and further relief as the Court deems just and proper.

**COUNTERCLAIM**

Counterclaimant Fusion Garage PTE Ltd., as and for its Counterclaims against TechCrunch, Inc. (“TechCrunch”) and CrunchPad, Inc. (collectively “Counterclaim Defendants,”) alleges as follows:

**INTRODUCTORY STATEMENT**

1. Counterclaim Defendants have filed a lawsuit against Fusion Garage for breach of fiduciary duty, claiming that Fusion Garage breached a “joint venture” to develop and launch a web tablet computer. Counterclaim Defendants’ claim is predicated on the allegation that they and Fusion Garage jointly participated in the development of the web tablet computer. Indeed, the Amended Complaint lists a number of “contributions” that Counterclaim Defendants allegedly made to the web tablet’s “specifications, performance characteristics . . . software architecture, hardware platform design and component sourcing, hardware forms factor and other designs, driver integration, application programming interface, [and] user interface.” (Amended Complaint, ¶ 56(a)). However, these allegations are false. *Fusion Garage* was entirely responsible for developing the hardware, software, user interface, and other specifications of its web tablet, and Counterclaim Defendants cannot claim credit for Fusion Garage’s own efforts. Accordingly, Fusion Garage brings this counterclaim to protect its rights and to oppose Counterclaim Defendants’ wrongful attempt to claim credit for Fusion Garage’s own device.

1 **PARTIES**

2 2. Counterclaimant Fusion Garage is a Singapore company with its principal place of  
3 business in Singapore.

4 3. Upon information and belief, Counterclaim Defendant TechCrunch is a Delaware  
5 corporation with its principal place of business in this District.

6 4. Upon information and belief, Counterclaim Defendant CrunchPad, Inc. is a  
7 Delaware corporation with its principal place of business in this District.

8 **JURISDICTION**

9 5. The Court has original jurisdiction over this action, including Fusion Garage’s  
10 counterclaims, under 28 U.S.C. §§ 1332, 1367, and 2201.

11 **VENUE**

12 6. This District is a proper venue for these Counterclaims because, upon information  
13 and belief, Counterclaim Defendants maintain their principal place of business in this District.

14 **FACTS COMMON TO ALL CAUSES OF ACTION**

15 **A. The Initial Contact Between TechCrunch and Fusion Garage**

16 7. Fusion Garage is a Singapore-based technology start-up company. On or about  
17 about February 2008, Fusion Garage began developing an innovative browser-based operating  
18 system for mobile devices.

19 8. Upon information and belief, Counterclaim Defendant TechCrunch is a California-  
20 based media company that owns and operates the “TechCrunch” blog. Its founder and co-editor is  
21 Michael Arrington.

22 9. On July 21, 2008, Mr. Arrington purportedly posted a public message on the  
23 TechCrunch blog expressing his desire for a “dead simple web tablet for \$200.” This public  
24 message came to the attention of Fusion Garage, which was intrigued by the possible synergies  
25 between Arrington’s web tablet idea and Fusion Garage’s own operating system software. Fusion  
26 Garage’s CEO, Chandrasekar Rathakrishnan, traveled to San Francisco in September 2008 and  
27 met with Mr. Arrington at the “TechCrunch 50” conference that month.

1           10.     Upon meeting Mr. Rathakrishnan, Mr. Arrington was likewise excited about the  
2 possible synergies between his web tablet idea and Fusion Garage’s operating system software.  
3 Accordingly, Mr. Arrington and his colleagues began merger negotiations in the Fall of 2008 to  
4 acquire Fusion Garage. Mr. Arrington also established a new shell company, “CrunchPad, Inc.,”  
5 which was to be the corporation that merged with Fusion Garage and commercialized Mr.  
6 Arrington’s proposed web tablet.

7           11.     Upon information and belief, Mr. Arrington and his colleagues created two web  
8 tablet prototypes in furtherance of his vision. The first prototype, an August 2008 device called  
9 “Prototype A,” was (by Mr. Arrington’s own admission) a “humble and messy” device that  
10 “barely booted.” The second prototype, a January 2009 device called “Prototype B,” was a 12.5”  
11 x 9.7” x 1.3” device powered by a VIA Nano processor. Fusion Garage had no involvement in  
12 Prototype A, and its involvement in Prototype B was limited to providing a version of its operating  
13 system software to demonstrate the functionality of this software and prove its bona fides as an  
14 acquisition target.

15           **B.     The Death of TechCrunch’s Web Tablet Efforts and Birth of Fusion Garage’s**  
16           **Device**

17           12.     By March 2009, it became clear to Fusion Garage that Mr. Arrington’s and  
18 TechCrunch’s web tablet efforts were stalling. Louis Monier—the consultant that TechCrunch  
19 allegedly hired to spearhead its web tablet efforts—remarked to Mr. Rathakrishnan around this  
20 time that the web tablet project “had no legs,” that there was insufficient funding available, and  
21 that Fusion Garage should figure out what to do on its own should it wish to pursue a web tablet.  
22 (Ex. D.)

23           13.     Faced with the reality that Mr. Arrington and TechCrunch would be unable to build  
24 a viable web tablet to house Fusion Garage’s software, Fusion Garage began developing both  
25 software *and* hardware for its own web tablet from scratch. Fusion Garage built successive  
26 prototypes of a web tablet between March and November 2009.

1           14.     Fusion Garage and Counterclaim Defendants engaged in intermittent merger  
2 negotiations throughout the March '09 – November '09 period. In furtherance of these merger  
3 negotiations, Fusion Garage also kept Mr. Arrington and his colleagues apprised about the  
4 development of its device and provided product demonstrations to Mr. Arrington and the  
5 TechCrunch team.

6           15.     Neither Mr. Arrington, nor any other agent of TechCrunch or CrunchPad, Inc.,  
7 contributed to the hardware, software, user interface, or other specifications of Fusion Garage's  
8 device in any meaningful way. The device that Fusion Garage developed between March '09 and  
9 November '09 (including all intermediate prototypes created during this period) was entirely a  
10 product of Fusion Garage' own efforts and expertise.

11          16.     On or about November 17, 2009, Fusion Garage informed TechCrunch that the  
12 merger talks appeared to be at an impasse and that Fusion Garage planned to launch its device  
13 without Plaintiffs' involvement. Fusion Garage formally launched its device, under the name  
14 "JooJoo," on December 7, 2009.

15                   **A. The Amended Complaint Tries to Take Credit for Fusion Garage's**  
16                   **Device**

17          16.     Counterclaim Defendants filed suit against Fusion Garage on December 10, 2009,  
18 alleging that Fusion Garage breached its fiduciary duty by launching the JooJoo without their  
19 involvement. (Dkt. 1.) Counterclaim Defendants filed an Amended Complaint on September 13,  
20 2010 which substantially repeated these allegations. (Dkt. 167.)

21          17.     Specifically, the Amended Complaint attempted to support the breach of fiduciary  
22 duty claim by alleging that "Plaintiffs made numerous contributions to the joint venture with  
23 Fusion Garage." (*Id.* at ¶ 56.) It went on to allege that "Plaintiffs' contributions included []  
24 design and oversight of the specifications, performance characteristics (including boot speed that  
25 Fusion Garage prominently features in the advertising and promotion of its JooJoo product),  
26 software architecture, hardware platform design and component sourcing, hardware forms factor  
27 and other designs, driver integration, application programming interface, [and] user interface."  
28

1 (*Id.*) In short, the Amended Complaint attempts to give Counterclaim Defendants partial or full  
2 credit for the hardware, software, user interface, and other specifications of Fusion Garage’s  
3 product, in order to support their claim that they were in a “joint venture” with Fusion Garage over  
4 this product.

5 **FIRST CAUSE OF ACTION: DECLARATORY JUDGMENT**

6 18. Fusion Garage realleges and incorporates by reference the allegations in paragraphs  
7 1 through 17 above.

8 19. From March ’09 through November ’09, Fusion Garage built successive versions  
9 of its own web tablet computer. Counterclaim Defendants were not involved in developing the  
10 hardware, software, user interface, or other specifications for this device.

11 20. Counterclaim Defendants have attempted to take credit for the hardware, software,  
12 user interface, and other specifications of Fusion Garage’s device, in order to support their claim  
13 that they were in a “joint venture” with Fusion Garage to build and launch this device.

14 21. Accordingly, an actual and justiciable controversy exists over whether  
15 Counterclaim Defendants contributed to the hardware, software, user interface, or other  
16 specifications for Fusion Garage’s device, as well as whether Counter Claim Defendants are  
17 entitled to claim ownership of any intellectual property associated with Fusion Garage’s device,  
18 including any copyrights, patents, trademarks, trade secrets, or applications related to any  
19 copyrights, patents, or trademarks.

20 22. To protect its rights over its device and defeat Counterclaim Defendants’ “joint  
21 venture” allegations, Fusion Garage seeks a declaratory judgment that Counterclaim Defendants  
22 did not contribute to the hardware, software, user interface, or other specifications for Fusion  
23 Garage’s device.

24 23. Counter Claim Defendants also seek a declaratory judgment that Counter Claim  
25 Defendants do not own any aspect of the intellectual property related to Fusion Garage’s device,  
26 including any copyrights, patents, trademarks, trade secrets, or applications related to any  
27 copyrights, patents, or trademarks.

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# EXHIBIT A



**Michael Arrington**  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION  
INTERSERVE, INC., dba )  
TECHCRUNCH, a Delaware )  
corporation, and CRUNCHPAD, )  
INC., a Delaware )  
corporation, )  
Plaintiffs, )  
vs. ) No. 09-CV-5812 RS  
FUSION GARAGE PTE. LTD, a )  
Singapore company, )  
Defendant. )

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Deposition of MICHAEL ARRINGTON, taken  
on behalf of Defendant at Quinn,  
Emanuel, Urquhart, Oliver & Hedges,  
LLP, 555 Twin Dolphin Drive, Suite  
560, Redwood Shores, California 94065,  
beginning at 10:08 a.m. and ending at  
7:15 p.m., on Tuesday, April 20, 2010,  
before Jay W. Harbidge, CSR No. 4090.

**Michael Arrington**  
**Highly Confidential - Attorneys' Eyes Only**

1 were CrunchPad, TechCrunch and Fusion Garage; is  
2 that correct?

3 A. Yeah. It might have been more informal,  
4 or me and Chandra, for example, but yes.

5 Q. Well, was the agreement between Michael  
6 Arrington individually and Chandra Rathakrishnan  
7 individually or was it between --

8 A. No.

9 Q. I'm sorry?

10 A. No.

11 Q. It wasn't an individual agreement  
12 between individuals, correct?

13 A. Correct.

14 Q. It was an agreement between entities,  
15 and those were CrunchPad and TechCrunch on the one  
16 hand and Fusion Garage on the other; is that  
17 correct?

18 A. Yes.

19 Q. Okay. So this was not an agreement only  
20 between CrunchPad and Fusion Garage, correct?

21 A. Correct.

22 Q. Okay. And can you tell me the date that  
23 the parties reached this agreement?

24 MR. BRIDGES: Objection, vague and  
25 ambiguous, may call for a legal conclusion.

1                   THE WITNESS: The first meeting I had  
2 with Chandra was, I believe, in -- I believe in  
3 October, although there's some email evidence to  
4 nail the date down. At that meeting, we, Chandra  
5 and I, agreed that the only way to work together was  
6 a merger of the entities.

7                   In particular, I was concerned -- excuse  
8 me -- I was concerned that -- Fusion Garage had a  
9 different product that they were in the middle of  
10 creating and that our partner needed to be  
11 completely focused on the CrunchPad project. And he  
12 agreed that that was a concern.

13                   And so at that meeting we agreed that we  
14 needed to combine these entities to make sure that  
15 we were all working towards one goal and the same  
16 goal. That arrangement, that agreement, never  
17 changed until November of 2009.

18 BY MR. STERN:

19                   Q. Okay. Move to strike. That was not my  
20 question.

21                   My question was, the specific agreement  
22 referred to in the last sentence of paragraph 31 on  
23 page 6 where, again, you say that the parties  
24 agreed, quote, "that each would bear its own losses  
25 of time, energy and money if the project was not

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1           successful, and to share the profits if it was,"  
2           close quote, when was that agreement reached? And  
3           I'm looking for a date.

4                         MR. BRIDGES: Objection, vague and  
5           ambiguous, asked and answered.

6                         THE WITNESS: The problem was that  
7           Fusion Garage had a messy cap table, and that was  
8           the primary reason why we didn't combine the  
9           companies, the assets, right from the start.

10                        In the meantime, while Chandra was  
11           working to clean up his cap table, we had a general  
12           working relationship where he would continue to pay  
13           in particular payroll for the Fusion Garage  
14           employees and many of the expenses that went to  
15           third parties. We would cover some of them in  
16           particular when they needed the money.

17                        That was an ongoing relationship that we  
18           operated under the entire time while working towards  
19           merging the entities.

20           BY MR. STERN:

21                        Q.    Okay. But my question was -- again,  
22           moving to strike what you just said, my question  
23           was -- I'm looking for a date -- can you tell me the  
24           date that you and anybody on behalf of Fusion Garage  
25           reached an agreement where each of the parties,

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1           A.    Fusion Garage for the entire year was  
2           just -- they would have bouts of quiet and we said,  
3           you know, "Chandra, you've got to talk to me.  If  
4           things are going wrong, talk to me.  Let me know  
5           what's going on."

6           Q.    You felt they weren't forthcoming with  
7           you about the hardware?

8           A.    About everything sometimes.  That's why  
9           Brian and Nik were sent out there because of Chandra  
10          not getting enough information for me.  These guys  
11          need to go out on there, and Chandra said okay.

12          Q.    When your people went to visit Pegatron,  
13          did you hear that they learned that Pegatron was not  
14          prepared to provide the hardware on the terms that  
15          you understood they were going to be providing them?

16          MR. BRIDGES:  Objection, vague and  
17          ambiguous.

18          THE WITNESS:  My understanding from  
19          Brian was that we were in the ballpark on the  
20          hardware, that the BOM looked in the ball bark of  
21          doable.

22          There was some concern about Pegatron  
23          seeming to not know who they were or that we were  
24          even part of the project.  There was something about  
25          of being a customer of the project.  It's in the

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1 document.

2 But that led to some concern at the time  
3 that maybe something was going on. I talked to  
4 Chandra about it. He said, "Everything's fine."

5 BY MR. STERN:

6 Q. You mean you heard that CrunchPad was a  
7 customer of their products?

8 A. There was some discussion of that. I'm  
9 hearing this thirdhand now through Brian, but yes.

10 Q. But that led you to believe that somehow  
11 Fusion Garage was not recognizing CrunchPad as a  
12 partner but rather just seeing them as a purchaser  
13 of the product?

14 MR. BRIDGES: Objection, competence,  
15 vague and ambiguous.

16 BY MR. STERN:

17 Q. First of all, let me ask you --

18 MR. BRIDGES: By the way, Mr. Stern,  
19 let's do about two more minutes and then take a  
20 break. It's been over an hour.

21 BY MR. STERN:

22 Q. Can you tell me, what are you aware of  
23 Fusion Garage's current funding?

24 MR. BRIDGES: Objection, vague and  
25 ambiguous.



**Michael Arrington**  
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1                                   **THE WITNESS: What I read in the press.**

2                                   **That's about it.**

3                                   BY MR. STERN:

4                                   Q.     What do you read in the press?

5                                   A.     They said they raised, I think, a \$2  
6                                   million round. And then I think they said we have  
7                                   another big round coming. But, again, I don't know.  
8                                   That's about all I know about it.

9                                   Q.     Did you ever raise a \$2 million round  
10                                  for the acquisition of Fusion Garage?

11                                  MR. BRIDGES: Objection, vague and  
12                                  ambiguous.

13                                  THE WITNESS: We never closed on the  
14                                  round that was offered.

15                                  BY MR. STERN:

16                                  Q.     Who offered the money?

17                                  A.     In the term sheet it was First Round  
18                                  Capital, SoftTech VC. Ron Conway I think had signed  
19                                  up, maybe not formally, and they were going to put  
20                                  together the rest of the round as needed.

21                                  Q.     Do you remember what the total round was  
22                                  going to be?

23                                  A.     We were targeting a couple of million  
24                                  dollars, \$2.

25                                  Q.     But that round never closed; is that

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1 correct?

2 A. Correct.

3 Q. Even though you say it never closed,  
4 what do you mean by that -- there was no paper on  
5 the deal?

6 A. They sent us a term sheet by email.

7 Q. Did you sign it?

8 A. It's not customary to sign the term  
9 sheet, so no.

10 Q. Let me see if I get this straight. It's  
11 your sworn testimony that in Silicon Valley it's not  
12 customary to sign term sheets; is that right?

13 A. It's my belief that, particularly around  
14 financing, that signing of term sheets is actually  
15 pretty rare, yes.

16 MR. BRIDGES: We've gone a couple of  
17 minutes. Let's take a break now.

18 THE VIDEOGRAPHER: We are off the record  
19 at 4:26 p.m.

20 (Brief recess.)

21 THE VIDEOGRAPHER: We're back on the  
22 record at 4:47 p.m.

23 BY MR. STERN:

24 MR. STERN: Next exhibit.

25 //

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1 same number that two months later, if you look at  
2 Exhibit 8, Exhibit 8 --

3 A. Yes.

4 Q. -- if you look at the cap table for  
5 Exhibit 8, it talks about \$2 million being invested.

6 Do you see that?

7 A. Yes.

8 Q. Are you with me on that?

9 A. Yes.

10 Q. And it's also on October 26th, Exhibit  
11 11.

12 A. Yes.

13 Q. Do you have it there?

14 A. Probably.

15 Q. Yes. Exhibit 11, if you look at the cap  
16 table, it also talks about raising \$2 million,  
17 right?

18 A. Yes.

19 Q. So I've showed you three pieces of paper  
20 that span from June 2009 to November of 2009. All  
21 those pieces of paper show it raising capital of \$2  
22 million, right?

23 A. Yes.

24 Q. So I just want to make sure. It was  
25 your understanding repeatedly to these various

1 different documents and communications with all  
2 sorts of different people that \$2 million was the  
3 amount of cash that you needed to -- and I want to  
4 use your language -- to be able to do production of  
5 the CrunchPad device up to 1,000 units. Is that  
6 what you said?

7 MR. BRIDGES: Objection, misstates  
8 testimony.

9 THE WITNESS: \$2 million seemed to be  
10 roughly the amount needed to get to the point where  
11 we could start producing CrunchPads.

12 BY MR. STERN:

13 Q. Okay, all right. Now, you testified  
14 that you understand that my client has raised how  
15 much money?

16 A. This is based on what I'm reading in the  
17 press.

18 Q. Yes.

19 A. That he said he had raised a couple of  
20 million dollars.

21 Q. Did you also read in the press that in  
22 addition to the couple of million dollars he's  
23 already raised, there's also additional funding  
24 that's coming in?

25 A. I read something about him saying there

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1 was a substantial amount of funding coming at some  
2 point this year.

3 Q. Can you please tell me what facts you're  
4 aware of that suggest that with a couple million  
5 dollars, my client, Fusion Garage, can't do what you  
6 believed CrunchPad could do between June and  
7 November of 2009, namely, bring to market a web  
8 tablet?

9 MR. BRIDGES: Objection, vague and  
10 ambiguous, assumes facts not in evidence.

11 THE WITNESS: There were a number of  
12 factors involved in us getting the CrunchPad to  
13 market. A key relationship was going to be Best  
14 Buy. Getting a device through FCC clearance,  
15 getting the tooling done, getting the basic stuff  
16 made, that's going to cost a certain amount of  
17 money. We estimated that at \$1.1 and \$1.2 million,  
18 something like that.

19 Actually getting devices product is  
20 expensive. You're looking at a BOM, a bill of  
21 materials, of \$300, around there. You also need to  
22 think about shipping costs. And you also need to  
23 think about cash flow. When we talked to Best Buy,  
24 we were talking about placing orders of thousands of  
25 units at a time. That simply puts the company out

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1 THE WITNESS: Nothing more than the  
2 discussions that I have had over the last year with  
3 them.

4 BY MR. STERN:

5 Q. Can you tell me as many details as you  
6 can, and I understand that you said that -- withdraw  
7 that. Let me start over.

8 Everything you know about Fusion Garage's  
9 financing is what you've read in the press, right?

10 MR. BRIDGES: Objection, misstates the  
11 testimony.

12 THE WITNESS: No.

13 BY MR. STERN:

14 Q. What else do you know?

15 A. Well, I know what Chandra told me  
16 directly before the relationship dissolved.

17 Q. Then let's break it down. Other than  
18 what Mr. Rahthakrishnan told you and what you read  
19 in the press, are there any other sources of the  
20 financing that Fusion Garage has?

21 A. No.

22 Q. Okay. So let's first talk about what  
23 you read in the press. Tell me everything that you  
24 know about any monies that are available to Fusion  
25 Garage with respect to the JooJoo product based on

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1           what you read in the press?

2                   A.    If I remember correctly --

3                           MR. BRIDGES:   Okay.  Objection, lacks  
4                   competence.

5                           THE WITNESS:   If I remember correctly,  
6                   there were statements in the press about him closing  
7                   the \$2 million in funding early on when he was  
8                   announcing the product.  He also, I believe, made  
9                   statements around a Malaysian partner who was going  
10                   to -- I don't think he made statements they were  
11                   investing in it; I think they were going to help him  
12                   with production costs.  Again, vague statements, I'm  
13                   not really sure.

14                           He also made statements to the press, I  
15                   believe, that he had raised a substantial new round  
16                   of funding that would be announced in a couple of  
17                   weeks.  I believe those statements were made in  
18                   January, maybe February, January, something like  
19                   that, maybe even earlier.  And as far as I know,  
20                   that has never been announced.  That's all that I  
21                   have heard.

22                   BY MR. STERN:

23                           Q.    Anything else?  Like can you give me any  
24                   details about any of those things?

25                           A.    That's basically the sum of everything

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1 I've heard.

2 Q. See, when witnesses say "basically the  
3 sum," I'm thinking they're trying to summarize for  
4 me, and I really don't want you to summarize.

5 Is there any greater detail you obtained  
6 in the press than that?

7 A. That's it.

8 Q. So now, tell me what Mr. Rahthakrishnan  
9 told you before the relationship changed.

10 A. Over the course of the time I knew him,  
11 he was always in financial trouble, always  
12 hand-to-mouth, having trouble making payroll,  
13 according to him, having to fly back to Asia to find  
14 new investors, none of whom seemed to be very  
15 attractive investors. A lot of them had just  
16 completely different terms every month where they  
17 wanted to be repaid, they didn't, and he provided  
18 various documents showing different people's names.  
19 The key thing was he seemed to be continuing to make  
20 payroll and wasn't losing people.

21 Q. What was the last sentence you said?

22 A. The key thing was he seemed to be making  
23 his payroll.

24 Q. He seemed to be making his payroll?

25 A. Yes, sometimes he was late, but his



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1 got, the \$2 million investors, where are they from?  
2 What's your understanding?

3 A. I don't know.

4 Q. Do you know if they're Asian investors?

5 MR. BRIDGES: Objection, foundation.

6 THE WITNESS: Yes, I don't know. The  
7 chiropractor, I don't know if he's in Florida or  
8 where. I don't know where these guys are.

9 BY MR. STERN:

10 Q. Okay. Do you have any reason -- have  
11 you heard from any source that in fact he didn't get  
12 \$2 million in funding?

13 MR. BRIDGES: Objection, argumentative.

14 THE WITNESS: No.

15 BY MR. STERN:

16 Q. Have you ever seen any information that  
17 the funding he's getting is contingent on any  
18 particular event taking place or not taking place?

19 MR. BRIDGES: Objection, lacks  
20 foundation, vague and ambiguous.

21 THE WITNESS: The funding that I've read  
22 that he's getting? I don't believe so.

23 BY MR. STERN:

24 Q. Do you have any information as to where  
25 within the \$2 million funding he's gotten that he's

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1 burned through already?

2 MR. BRIDGES: Objection, foundation.

3 Sorry, vague and ambiguous.

4 THE WITNESS: I'm sorry, repeat the  
5 question.

6 BY MR. STERN:

7 Q. The question is, do you have any  
8 information as to how much of the \$2 million  
9 Mr. Rahthakrishnan or Fusion Garage has burned  
10 through already?

11 A. I have no direct information.

12 Q. Do you know if it's \$200,000 or  
13 \$800,000?

14 MR. BRIDGES: Objection, asked and  
15 answered, vague and ambiguous, foundation.

16 THE WITNESS: Yes, I don't know. All I  
17 know is that the times Chandra talked about coming  
18 up with money, it was almost always phantom money.

19 BY MR. STERN:

20 Q. Do you have any understanding as to when  
21 he first received the \$2 million in funding?

22 MR. BRIDGES: Objection, foundation.

23 THE WITNESS: I don't even have  
24 confirmation that he received the \$2 million so I  
25 don't know.

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1 BY MR. STERN:

2 Q. When did you first read that he did?

3 A. I'm not sure I did read that. I mean,  
4 his email to me said he had it. I think there  
5 were -- I don't know, post --

6 Q. You testified that in the press of the  
7 information you learned, you learned that he had  
8 closed \$2 million in funding. I'm not saying that  
9 it happened; I'm just saying that's what --

10 A. Yes, I mean, I think I read that. Maybe  
11 he said, "I am closing." I don't know.

12 Q. Okay. You don't know?

13 A. Yes.

14 Q. All right.

15 MR. STERN: You want to take a break?

16 MR. BRIDGES: No. Let's keep going for  
17 a little bit longer. It's this allergy that kicks  
18 up in the afternoon. That's all.

19 BY MR. STERN:

20 Q. Was there a period of time during 2009  
21 when you stopped focusing on the business of the  
22 CrunchPad project?

23 MR. BRIDGES: Objection, vague and  
24 ambiguous.

25 THE WITNESS: Can you be more specific?

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1           Q.    In general, no.  So let me just make  
2           sure we're clear about this.  Can you tell me -- I  
3           keep asking, but can you identify -- well, let me  
4           change the question.

5                     Please identify every contribution that  
6           someone from TechCrunch or CrunchPad but not Fusion  
7           Garage made to the hardware/software design or other  
8           aspects of the CrunchPad.

9                     MR. BRIDGES:  Objection, it's asked and  
10          answered earlier today, compound, vague and  
11          ambiguous.

12         BY MR. STERN:

13           Q.    You testified about some things this  
14           morning.  The high-level things.

15           A.    It's virtually impossible to answer the  
16           question because it was a collaborative process.  We  
17           were all working together.

18           Q.    And that's the best you can give me; is  
19           that fair?

20                     MR. BRIDGES:  Objection, the question  
21           earlier was asked and answered.  It's now -- we're  
22           now six hours into the deposition.  He's answering  
23           questions you've asked him before.  I'm going to  
24           object on the grounds of argumentative, vague and  
25           ambiguous.

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1 BY MR. STERN:

2 Q. You can answer the question. Is that  
3 the best you can give me, that it's virtually  
4 impossible to answer it?

5 A. That's my answer, yes.

6 Q. Okay. Can you tell me what  
7 contributions anyone from TechCrunch or CrunchPad  
8 but not Fusion Garage made to the source code that  
9 existed at any point in time for either the  
10 CrunchPad or the JooJoo?

11 MR. BRIDGES: Objection, compound, lacks  
12 foundation with respect to the JooJoo, vague and  
13 ambiguous, and also to a certain extent asked and  
14 answered.

15 But go ahead.

16 THE WITNESS: One part of that I can  
17 answer directly easily is the first prototype of the  
18 CrunchPad was designed entirely by Nik on the  
19 software side -- hardware with a little bit of help.  
20 But, you know, that was the -- I believe a mostly  
21 commercial installation of Linux with some  
22 customizing. That was entirely, though, Nik.

23 I believe with prototype B where Louis  
24 was involved as well, that's when we moved to mostly  
25 Fusion Garage software. At that point they were

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1           taking over. The actual coding was done by Fusion  
2           Garage employees.

3           BY MR. STERN:

4                   Q.    Can you tell me any architectural  
5           feature of the JooJoo software product that was  
6           contributed by anybody associated with TechCrunch or  
7           CrunchPad but not Fusion Garage?

8                   MR. BRIDGES:  Objection, vague and  
9           ambiguous, lacks foundation.

10                   THE WITNESS:  I'm not sure what you mean  
11           by "architectural."  Do you mean design?  Do you  
12           mean --

13           BY MR. STERN:

14                   Q.    Yes, yes.

15                   A.    Again, I point back to my original post  
16           which talked about booting immediately to the  
17           browser.  But things like single buttons; camera  
18           facing the front.  When you turn the device, it  
19           flips the aspect, so you can turn it this way, turn  
20           it that way and see differently.  The fact that when  
21           you're outside of typing a URL or something else,  
22           you don't see the chrome of the browser was  
23           something earlier on that we had together agreed was  
24           a really good idea.

25                   There are examples like that, again, we

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1           were doing collaboratively. A lot of these were at  
2           my insistence; some were ideas from other people  
3           including Chandra's team. But, you know, nearly  
4           every aspect of it was something I was involved in.

5           Q. Well, you've now said that a lot of  
6           these were at my insistence but some of them were  
7           ideas from Chandra. But that wasn't my question.

8           I keep -- I'm asking for contributions  
9           made by people at CrunchPad or TechCrunch but not  
10          made by people at Fusion Garage.

11          MR. BRIDGES: Again, asked and answered  
12          from this morning, vague and ambiguous.

13          THE WITNESS: The point is, you mostly  
14          don't keep track. When you're building things as a  
15          team and you're having fun and you're doing it  
16          together, you don't keep track of every single  
17          little feature. So you have to go back and look at  
18          emails, well, I think I remember saying that, and  
19          somebody else remembers the other thing. The point  
20          is, we're doing it together -- in the same offices  
21          often.

22          BY MR. STERN:

23          Q. Let me ask you, when you say single --  
24          I'm sorry, booting directly to the browser, have you  
25          used the iPad?

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1                   MR. BRIDGES:  Objection, asked and  
2                   answered, argumentative, vague and ambiguous.

3                   THE WITNESS:  It never occurred to me,  
4                   which in hindsight, I wish it had.  It would have  
5                   complicated the situation.  You can imagine that  
6                   we're working towards a merger and we think we're  
7                   good to go on the merger.  If you start talking  
8                   about some other agreement that you're signing and  
9                   entering into which requires possibly shareholder  
10                  approval, etcetera, it's just common:  "Why are we  
11                  doing this?  I though we were working on a merger."

12                  I always thought that a merger was just  
13                  around the corner and we were going to get it done;  
14                  I really did -- I really did.  I always thought it  
15                  was just around the corner.  So no, I didn't.

16                  MR. BRIDGES:  Let's take a break.

17                  MR. STERN:  That's fine.

18                  THE VIDEOGRAPHER:  We are off the record  
19                  at 5:59 p.m.

20                  (Brief recess.)

21                  THE VIDEOGRAPHER:  We're back on the  
22                  record at 6:17 p.m.

23                  BY MR. STERN:

24                  Q.  Can you please tell me everything you  
25                  know about loans that have been extended by third



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1 parties to Fusion Garage.

2 A. At a high level, I know about Chandra  
3 talking about constantly raising small amounts of  
4 money mostly to make payroll and some vendor third-  
5 party costs. It's limited to what I know is  
6 basically in the emails, and that's really all I  
7 know about it.

8 Q. Do you know anything else other than  
9 what you just told me? Is there any other  
10 information you have about the details of loans that  
11 have been made to Fusion Garage?

12 A. Offhand, no. I would have to refer back  
13 to the emails. In general, it was just there were a  
14 lot of people that had loaned money, according to  
15 Chandra, and, you know, some of them were happy  
16 converting, some of them weren't, so they needed to  
17 be paid back. So our request was that he just get  
18 it cleaned up.

19 Q. Do you know what the status of those  
20 loans are today?

21 A. No.

22 Q. Do you know many of the loans are  
23 outstanding?

24 A. I don't know.

25 Q. Do you know how many of the loans have

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1           **been repaid?**

2           **A.    I don't know.**

3           Q.    Do you know if any of the loans are  
4           secured?

5           A.    No.

6           Q.    Do you know any of the terms of the  
7           loans?

8           A.    There was some discussion of, you know,  
9           seven percent per month interest on at least one  
10          loan, but that was it.  I never saw any paperwork or  
11          anything like that.  I'm not sure there was  
12          paperwork around it.  So no, not really.  Just  
13          mostly things that Chandra told me in emails that he  
14          sent.

15          Q.    Right now does CrunchPad sell a product?

16          A.    No.

17          Q.    Does TechCrunch sell a product?

18          MR. BRIDGES:  Objection, vague and  
19          ambiguous.

20          THE WITNESS:  I hate to ask.  What do  
21          you mean by "sell"?  Like we're in business?

22          BY MR. STERN:

23          Q.    Do you sell or license a web-based  
24          product?

25          MR. BRIDGES:  Objection, vague and

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1           ambiguous.

2           BY MR. STERN:

3                   Q.    Well, you mentioned TechBase.

4                   A.    We have events we sell tickets to and  
5                   sell sponsorships to; we have an advertising-  
6                   supported -- a number of advertising-supported  
7                   websites; another website, CrunchBase, which is  
8                   advertising and subscription supported.

9                   Q.    Do you sell a web tablet?

10                  A.    We do not.

11                  Q.    Right now are you in the process of  
12                  developing a web tablet?

13                  MR. BRIDGES:  Objection, vague and  
14                  ambiguous.

15                  THE WITNESS:  We continue to have hopes  
16                  of doing something in that regard and occasionally  
17                  have discussions with people around opportunities.

18                  BY MR. STERN:

19                   Q.    When was the last time that you put  
20                   together a proposal to any company about developing  
21                   a web tablet?

22                  MR. BRIDGES:  Objection, vague and  
23                  ambiguous.

24                  THE WITNESS:  Would you repeat the  
25                  question, please?

# EXHIBIT B

---

**From:** 'Heather Harde' <heather@techcrunch.com>  
**To:** Chandrasekar Rathakrishnan <chandra@fusiongarage.com>  
**CC:** Michael Arrington <editor@techcrunch.com>  
**Sent:** 12/18/2008 12:09:24 AM  
**Attachments:** FG\_LOI\_121708.doc  
**Subject:** LOI

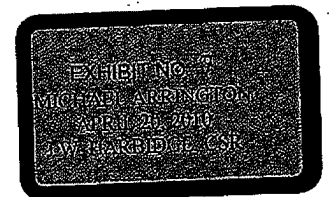
Chandra,

Thanks so much for your patience this past week. Your family has been in my thoughts.

Attached for your review is our letter of intent to acquire Fusion Garage. Please take the necessary time to review our proposal and let us know when you're ready to schedule a follow-up conversation. We remain extremely enthusiastic about combining forces to create a revolutionary new product for mass distribution, and we look forward to moving the discussion forward at an aggressive pace. Best regards,

Heather

[heather@techcrunch.com](mailto:heather@techcrunch.com)



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FG00001044

CrunchPad Inc.  
PO Box 638, Menlo Park, CA 94026

December 17, 2008.

Fusion Garage  
120 Lower Delta Road  
#01-16 Cendex Building  
Singapore 169208  
Attn: Chandrasekar Rathakrishnan, Founder & Chief Executive Officer

Dear Chandra:

This letter (this "Letter of Intent") will confirm the mutual intentions of CrunchPad Inc. ("Purchaser") and Fusion Garage ("Target") regarding the acquisition by Purchaser of the outstanding shares of Target. It is understood that this Letter of Intent is intended to set forth the fundamentals of the proposed transaction, but that certain aspects of such transaction may be revised and new issues presented upon further investigation.

1. **Form of Transaction.** Purchaser proposes to acquire all of the business assets and liabilities of Target by acquiring all of the outstanding shares of capital stock of Target. The transaction would be structured as a direct purchase by Purchaser from the stockholders of Target ("Selling Stockholders") *provided that*, in the event that Purchaser, in its sole discretion, determines that the transaction would be more efficiently effected by a merger or an asset sale, Purchaser shall have the right to re-structure the transaction as a merger or an asset sale.

2. **Consideration.** In consideration of all the outstanding shares of capital stock (including approximately 115,000 options for shares that have yet to be granted to current employees and contractors through the Closing Date) of Target, Purchaser proposes to pay the Selling Stockholders an aggregate purchase price equal to eight (8%) percent of CrunchPad Inc. common stock and to assume the cash balance and up to S\$260,000 (Singapore dollars) in third-party indebtedness of Target (the "Purchase Price"). The portion of the purchase price paid to investors of Target shall be vested in full. The portion of the Purchase price paid to the founder and employees of Target shall be subject to vesting as set forth in section 4 of this letter below. The Purchase Price shall be payable by Purchaser on the closing date to be agreed upon by the parties (the "Closing Date.") The Purchase Price is based upon preliminary due diligence conducted by Purchaser on Target and its business and is subject to adjustment downward, to the extent reasonably agreed upon by Purchaser and Target, in the event that (a) issues discovered in the course of Purchaser's due diligence effort lead to a materially lower valuation of Target's business than the valuation determined based upon Purchaser's due diligence prior to the date hereof, or (b) there is a material adverse change in Target's business, assets, financial condition or prospects following the date hereof (or occurring prior to the date hereof but not disclosed to Purchaser as of the date hereof) (a "Material Adverse Change") or (c) the indebtedness or cash balance of Target changes by more than the historic three-month average burn rate of Target. Purchaser will make good-faith efforts to repay a S\$160,000 (Singapore dollars) third-party loan of Target upon the closing a round of financing in excess of \$1 million.

3. **Definitive Agreement.** The terms and conditions governing the acquisition are, subject to the proviso in Section 1 of this Letter of Intent, to be contained in a stock purchase agreement (the "Stock Purchase Agreement") that shall be subject, in all respects, to the approval of both parties and their respective professional and financial advisors. The Stock Purchase Agreement shall include, among others, the following terms and conditions:

(a) Customary representations and warranties made by parties to a stock purchase transaction, including without limitation a representation that Target owns all intellectual property necessary or desirable to develop, manufacture, market and sell its products and services and customary investment representations by the Selling Stockholders;

(b) Customary conditions to be satisfied before the parties are obligated to close the transaction, including without limitation (i) the approval of the transaction by the boards of directors of both Purchaser and Target; (ii) the approval of the transaction by the stockholders of Target as provided by law; (iii) receipt of all approvals, authorizations and clearances needed from any governmental or regulatory authority or any other person required for consummation of the transaction; (iv) completion of a due diligence investigation of Target by Purchaser and its advisors, to Purchaser's sole satisfaction; (v) delivery of appropriate legal opinions from counsel to Target; (vi) the absence of injunctions and similar restraints; (vii) the accuracy of representations and warranties and performance of covenants; (viii) there shall not have occurred a Material Adverse Change; (ix) each of the warrants, options and other rights to ownership interest or profit participation in Target shall be cancelled or waived, other than the shares of Target being purchased by Purchaser; and (x) the execution of the employment agreements and non-compete agreements referenced herein.

4. **Key Employees.** The option grants extended to employees and consultants of Target will be subject to four-year vesting with a one-year initial cliff. Chandrasekar Rathakrishnan will be offered a role as VP Software & Co-Founder and will report initially to Louis Monier, the Chief Product Officer. Employees and contractors of Target will report to Rathakrishnan. Operating and reporting responsibilities will be subject to change to reflect the ongoing businesses needs of Purchaser.

5. **Due Diligence.** As soon as practicable after execution of this Letter of Intent, Purchaser, its agents and employees shall be permitted to make a full and complete due diligence review of Target's business and affairs. Target shall cooperate fully with such review, including providing access to its premises and making available all of Target's documents, employees and agents necessary for Purchaser's due diligence review.

6. **Indemnification; Setoff.** Target and the Selling Stockholders shall indemnify Purchaser for any loss, liability or claim, and all costs thereof, incurred in respect of (a) any breach by Target of its representations, warranties or covenants; (b) any failure of Target to perform any of its obligations under the Stock Purchase Agreement; and (c) any claims brought by employees or consultants of Target who were or are terminated prior to the Closing Date. Purchaser shall be entitled to set off any and all amounts under a promissory note to satisfy claims for breaches of representations, warranties and covenants and/or for payment of any other

amounts owed hereunder for a period of twenty four (24) months following the Closing Date, subject to certain agreed upon exceptions.

7. **No-Shop Provision.** In consideration of the mutual covenants set forth herein and the willingness of Purchaser to continue its due diligence and consideration of the proposed transaction, Target and the stockholders of Target party hereto agree that, from the date of this letter until the close of business on 60 days from the date hereof (the "No-Shop Period"), they will negotiate a sale of Target exclusively with Purchaser and that neither Target nor any director, officer, employee, stockholder, representative or agent of Target or its subsidiaries (collectively, "representatives") will, directly or indirectly, solicit, initiate, entertain or encourage any proposals or offers from any third party relating to any merger or consolidation of Target or its subsidiaries, the dissolution of Target or its subsidiaries or the acquisition of all or a material portion of Target's or any of its subsidiaries' capital stock or assets or any similar transaction, or participate in any discussions or negotiations regarding, or furnish to any person any information with respect to, any such transaction. Upon execution of this Letter of Intent, Target shall, and shall cause its representatives to, terminate all discussions and negotiations with all third parties relating to any such transaction.

8. **Confidentiality; Public Announcements.** Neither party shall, without the prior written consent of the other party, disclose to any third party the existence of this Letter of Intent, the identity of Purchaser or Target or the transactions contemplated by this Letter of Intent.

9. **Expenses.** Each party shall be responsible for its own legal, accounting and other fees and expenses related to the transactions contemplated by this Letter of Intent. Each party shall indemnify and hold harmless the other party from any claim for broker's or finder's fees arising from the transactions contemplated by this Letter of Intent by any person claiming to have been engaged by such party.

10. **Termination of Letter of Intent.** The parties will negotiate in good faith to enter into the Stock Purchase Agreement on or before 60 days from the date hereof. Following the 60 day period, the parties intend this exclusivity provision to continue in full force and effect until such time as either party determines that the parties, after negotiating in good faith, are unable to reach agreement on all material business terms and accordingly wish to terminate this agreement. If the parties fail to enter into the Stock Purchase Agreement on or before such date, the understandings contained in this Letter of Intent shall terminate and be of no further force or effect, except for paragraphs 9, 10 to 12, which shall survive any termination of this Letter of Intent.

11. **Governing Law.** This Letter of Intent shall be governed by and construed in accordance with the laws of the State of California, without reference to the conflicts of laws provisions thereof.

12. **Binding Effect.** Except for the provisions of paragraphs 5, 7 to 15, inclusive, each of which shall be deemed to be an agreement and binding upon the parties, it is understood that this Letter of Intent does not constitute nor give rise to any legally binding commitment.



13. **Assignability.** None of the rights of either party hereunder may be assigned, nor may any of the obligations of either party hereunder be delegated, without the prior written consent of the other party; *provided, however,* that Purchaser may assign its rights or delegate its obligations hereunder to any of its affiliates without the prior written consent of Target. This Letter of Intent shall be binding upon and shall inure to the benefit of the respective successors and permitted assigns of the parties hereto to the same extent that it is binding on the parties hereto.

14. **Amendment; Waiver.** No amendment, modification or discharge of this Letter of Intent, and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed by the party against whom enforcement of the amendment, modification, discharge or waiver is sought. No delay or failure at any time on the part of either party in exercising any right, power or privilege under this Letter of Intent, or in enforcing any provision of this Letter of Intent, shall impair any such right, power or privilege, or be construed as a waiver of such provision, or be construed as a waiver of any default or as any acquiescence therein, or shall affect the right of such party thereafter to enforce each and every provision of this Letter of Intent in accordance with its terms.

15. **Counterparts.** This Letter of Intent may be executed in one or more counterparts, each of which when so executed and delivered will be deemed an original but all of which will constitute one and the same agreement.

Please indicate your acceptance and approval of the foregoing statement of our mutual intentions, which intentions are subject in all respects to the execution and delivery of the Stock Purchase Agreement (except for the provisions of paragraphs 5, 7 to 15, inclusive, which shall be binding on both parties).

Sincerely,

**CrunchPad Inc.**

By: \_\_\_\_\_  
Name: J. Michael Arrington  
Title: CEO

Accepted and Approved  
as of the date first above written:

**Fusion Garage**

By: \_\_\_\_\_  
Name: Chandrasekar Rathakrishnan  
Title: CEO

# EXHIBIT C

**From:** 'Chandrasekar Rathakrishnan' <chandra@fusiongarage.com>  
**To:** Louis Monier <louis.monier@gmail.com>  
**Sent:** 11/13/2008 8:21:53 PM  
**Subject:** Re: Trip

hi louis,

i appreciate your transparency and follow-ups. Tech crunch was the primary agenda for the trip. Given developments, i can push back on the rest of the meetings as well and make my trip in early Dec instead.

I agree that the business discussions and options should be discussed prior via call to move things along and to facilitate closure. Who do you think I should be having those conversations with ? Heather/Mike/yourself or a combination of all 3 of you ?

We can progress product discussions as well via skype next week.

On another note just for my information, which stage is the funding process currently at and how close is it to finalization ? The information will help in my own planning :)

Cheers,  
c

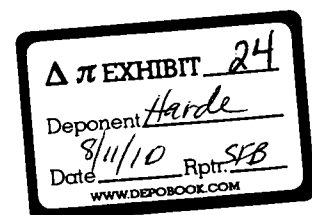
On Fri, Nov 14, 2008 at 10:23 AM, Louis Monier <louis.monier@gmail.com> wrote:  
Chandra, to re-iterate what Heather and Mike said. **We can't formalize something with you (as in signed papers) until we close the round of funding.** The pressure is on to make it happen now, and Mike and I have to fly to finalize some of the funding things next week (but we don't have dates yet). So, if you plan to come to the Bay Area only to talk to us, you should delay by (hopefully) a couple of weeks (Thanksgiving...). I suggest having all the business discussions ahead of time by phone. Ditto for product discussions, we could make progress next week with a few Skype sessions.

As Heather said, none of this is due to a lack of interest, on the contrary, I want you guys to be part of this, but **we need to make things happen in the right order.**

Call me if you have any question.

Cheers,  
--

--Louis



CONFIDENTIAL

FG0021636

# EXHIBIT D

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

--o0o--

INTERSERVE, INC., dba )  
TECHCRUNCH, a Delaware )  
corporation, and CRUNCHPAD, )  
INC., a Delaware )  
corporation, )  
 )  
Plaintiffs, )  
 )  
vs. ) No. C 09-cv-5812 RS  
 ) (PVT)  
FUSION GARAGE PTE. LTD., a )  
Singapore company, )  
 )  
Defendants. )  
\_\_\_\_\_ )

VIDEOTAPED DEPOSITION OF  
CHANDRASEKAR RATHAKRISHNAN

\_\_\_\_\_  
Thursday, April 22, 2010

CONFIDENTIAL portions bound separately: Pages 44-49, 94-105,  
110-158, and 281-334

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY portions bound  
separately: Pages 50-56, 65-66, 106-109, and 159-258

REPORTED BY: DEBRA ALLUSTIARTI CSR 10929 JOB 427851

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I N D E X

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EXHIBITS MARKED FOR IDENTIFICATION

No.	Description	Page
Exhibit 1003	E-mail string from ..... Chandrasekar Rathakrishnan to Jonathan Bloom, dated 11-16-09, Bate Nos. FG00029927 through FG00029933	78
Exhibit 1004	E-mail string from ..... Chandrasekar Rathakrishnan to Deepak TVS, Arulprasad Philip Ng, dated 11-17-09, Bate Nos. FG00001648 through FG00001650	92
Exhibit 1005	E-mail string from ..... Jonathan Bloom to Chandrasekar Rathakrishnan, dated 11-17-09, Bate Nos. FG00029952 through FG00029959	97
Exhibit 1006	Letter from ..... Chandrasekar Rathakrishnan to American Embassy, dated 9-3-09, Bate Nos. FG00001308 and FG00001309	98

1 MR. DOOLITTLE: Does not.  
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17:22:33 1 (Nonconfidential testimony resumed.)

17:22:35 2 MR. BRIDGES: Q. What was the next step  
17:22:41 3 of the due diligence process?

17:22:45 4 A. So this led up to end February 2009, and  
17:22:47 5 during which time, I'd got no response back for the  
17:22:54 6 counteroffer that we had for the letter of intent  
17:22:57 7 that they provided; except for suggesting that they  
17:23:00 8 were reviewing it, and they would revert soon.

17:23:03 9 MR. DOOLITTLE: They would what soon?

17:23:08 10 THE WITNESS: They would revert soon;  
17:23:12 11 something to that effect.

17:23:14 12 MR. BRIDGES: Q. What was the next step  
17:23:19 13 of the due diligence process?

17:23:23 14 A. There wasn't a next step because Louis  
17:23:27 15 Monier suggested that raising money for this would  
17:23:28 16 be difficult and the project had no legs to  
17:23:31 17 continue.

17:23:32 18 Q. You say there was no next step in the  
17:23:34 19 due diligence process?

17:23:39 20 A. At that point in time. Because they  
17:23:41 21 came back and said that they were not -- that they  
17:23:45 22 were not able to raise the money required for the  
17:23:48 23 project, and in his opinion, the project had no  
24 legs to continue. He specifically said this after  
25 a meeting with Google Ventures.

17:23:58 1 MR. DOOLITTLE: Can I just ask you to  
17:24:01 2 clarify? Do you mean there was no more due  
17:24:03 3 diligence in this early 2009 time frame?  
17:24:04 4 THE WITNESS: There was a date ended in  
17:24:05 5 February.  
17:24:07 6 MR. BRIDGES: Actually, I -- I  
17:24:11 7 understand, but I think I need to let you ask  
17:24:16 8 questions when I'm through.  
17:24:17 9 Q. So when did Louis Monier make this  
17:24:38 10 suggestion you just referred to?  
17:24:42 11 A. Somewhere late February 2009.  
17:24:45 12 Q. In what context did he say that?  
17:24:47 13 A. Don't understand.  
17:24:47 14 Q. Did he say it to you directly?  
17:24:48 15 A. Yes.  
17:24:53 16 Q. Where?  
17:24:54 17 A. Via an e-mail first and then through a  
17:24:58 18 phone call.  
17:25:01 19 Q. Was anybody else included in the e-mail?  
17:25:03 20 A. Not that I remember.  
17:25:03 21 Q. Was anybody else on the phone call?  
17:25:12 22 A. No.  
17:25:15 23 Q. What was your reaction to his statement?  
24 A. I thought the prototype that was created  
25 by them did not quite live up to expectation.

17:25:24 1 Q. In what respects?

17:25:25 2 A. There's no way the product could be  
17:25:28 3 commercialized.

17:25:34 4 Q. Why not?

17:25:43 5 A. It was a product put together by  
17:25:45 6 off-shelf parts, and one that did not reflect  
17:25:46 7 consumer device, whether in design or in function.

17:25:48 8 MR. BRIDGES: I'm sorry. Can you repeat  
17:26:22 9 his answer for me?

17:26:26 10 (Record read.)

17:26:29 11 MR. BRIDGES: Q. What were the  
17:26:34 12 customer's desired requirements in design or  
17:26:35 13 function that prototype -- that the prototype did  
17:26:37 14 not reflect?

17:26:39 15 MR. DOOLITTLE: Calls for speculation.

17:26:43 16 THE WITNESS: And to clarify what I  
17:26:45 17 meant was, it did not reflect a consumer product.

17:26:47 18 MR. BRIDGES: Q. And this was  
17:26:48 19 Mr. Monier's opinion?

17:26:49 20 MR. DOOLITTLE: Objection, misstates  
17:26:50 21 testimony.

17:26:52 22 THE WITNESS: This was my opinion.

17:26:57 23 MR. BRIDGES: Q. This was your opinion.  
24 So please tell me how -- by the way, which  
25 prototype were you referring to at that time?

17:27:08 1 A. Prototype B, which was created by  
17:27:15 2 TechCrunch, and for which we provided browser  
17:27:20 3 software.

17:27:24 4 Q. So in what ways did that prototype not  
17:27:28 5 reflect what consumers desired?

17:27:31 6 A. The form factor of the device, the  
17:27:35 7 design of the device was just not commercial and  
17:27:37 8 was not reflective of what a consumer wanted to  
17:27:41 9 use. And that was reflected in Louis's statement  
17:27:44 10 about not being able to get funding from VCs, and  
17:27:47 11 those were similar reasons he suggested.

17:27:51 12 Q. Okay. We can talk about what your views  
17:27:53 13 were, and we can talk about what Mr. Monier's views  
17:27:56 14 were, as expressed by him to you. Let me focus  
17:27:58 15 right now on your views.

17:28:00 16 You said the form factor and design were  
17:28:00 17 not satisfactory?

17:28:04 18 A. Yeah.

17:28:04 19 Q. What else about Prototype B was not  
17:28:07 20 satisfactory?

17:28:12 21 A. The software stacks was something that  
17:28:16 22 they put together by using open-source solutions.

17:28:16 23 Q. Does that alone make it unsatisfactory,  
24 or does that simply --

25 A. It was just not functioning the way it

# EXHIBIT E

---

 Watch TechCrunch Disrupt Live! »
 

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## About Those New CrunchPad Pictures

Michael Arrington

Apr 10, 2009

A little background for those of you who haven't heard of the CrunchPad: [This is the post](#) that kicked off the project. I wanted something I couldn't buy, and found people who said it could be built for a lot less than I imagined. The goal – a very thin and light touch screen computer, sans physical keyboard, that has no hard drive and boots directly to a browser to surf the web. The operating system exists solely to handle the hardware drivers and run the browser and associated applications. That's it.

The key uses: Internet consumption. The virtual keyboard will make data entry a pain other than for entering credentials, quick searches and maybe light emails. This machine isn't for data entry. But it is for reading emails and the news, watching videos on Hulu, YouTube, etc., listening to streaming music on MySpace Music and imeem, and doing video chat via tokbox. The hardware would consist of netbook appropriate chipsets (Intel Atom or Via Nano), at least a 12 inch screen, a camera for photos and video, speakers and a microphone. Add a single USB port, power in and sound out, and you're done. If you want more features, this ain't for you.

Price? it can be built for less than \$250, including packaging. Add in fixed costs and other stuff you have to deal with (like returns), and you can sell it for \$300 and probably not go out of business. Physical design is important, and the software is the key to winning.

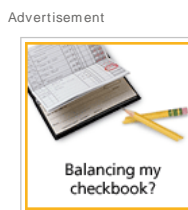
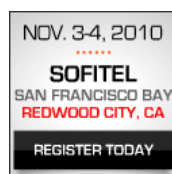
We stumbled through an [initial prototype](#) that barely booted, but we finished it in a month. [Prototype B](#) was much more impressive and usable. That effort was led by [Louis Monier](#), with software developed by Singapore-based [Fusion Garage](#) and industrial design work by by David Yarnell and Greg Lalier from [Dynaccept](#).

Anyway, we've continued to tinker with the project, which is referred to as Mike's Science Project internally (or, "that thing"). But we certainly aren't ready to talk about anything more at this point. But we did meet with Fusion Garage again today to test out the most recent prototype (B.5?). This is a significant step forward from Prototype B because the software stack is now entirely customized. The last version had a full install of Ubuntu Linux with a custom Webkit browser. This version has a bottom-up linux operating system and a new version of the browser. We also switched from Via to the Intel Atom chip. The total software footprint is around 100 MB total, which is a solid achievement. Also, this time the ID and hardware work was driven by Fusion Garage out of Singapore.

In fact, all the credit should go to Fusion Garage. But frankly we weren't planning on talking about it at all, it just isn't the right time yet. But, to make a long story short, someone accidentally published some photos we took to the web, they were seen and [shortly were everywhere](#) (see [lots lots lots lots lots more](#)). Even our own [CrunchGear couldn't resist](#).

Ok, so now that what's done is done, where do things stand? Well, I'm not ready to say yet. But one thing I've learned about hardware in the last year is that you need partners to actually make things happen, [and the credit for what we saw today goes entirely to the Fusion Garage team](#). Those guys are rock stars.

Here's are pictures of the various prototypes in chronological order if you're interested. The first was our initial conceptual drawing.



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TechCrunch Disrupt LIVE Webcast, Day One (TCTV)

The List Of Startups Launching At TechCrunch Disrupt

The Panel That Was Definitely, Maybe Not About AngelGate

Windows Live Outsources Blogging, Migrating 30 Million Users To WordPress.com

AngelGate: Chris Sacca Responds To Ron Conway

Bing Gordon: "Zynga Is Four Disruptions In One"

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crunchpad

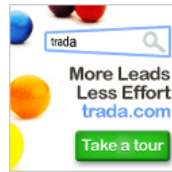
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# EXHIBIT F



---

**From:** Michael Arrington  
**Sent:** Friday, August 14, 2009 12:42 PM  
**To:** Heather Harde  
**Subject:** Re: tech crunch connection

crunchpad is dead.

On Aug 14, 2009, at 12:36 PM, Heather Harde wrote:

> Frances. Would love to meet and give you an update on the CrunchPad.  
> Please let me know your availability for next week and will see if  
> Michael Arrington can join as well. Are you available to meet in Palo  
> Alto (we're at 255 Lytton Ave.) Thank you,  
> Heather  
> [REDACTED] heather@techcrunch.com

> -----Original Message-----

> From: Frances Cairns [mailto:frances@thecairngroup.com]  
> Sent: Friday, August 14, 2009 12:15 PM  
> To: Heather Harde  
> Cc: Dave Morin  
> Subject: Re: tech crunch connection

> Thank you Dave!

> Hi Heather, Nice to meet you virtually! Disney is a client of mine  
> and they are interested in knowing more about the crunch pad. I work  
> with the publishing division and they would like to explore a possible  
> partnership regarding their content. Let me know if you have time to  
> meet in the next week or so and I could provide an overview of their  
> content and demo their new product. Frances

> Frances Cairns  
> CEO The Cairn Group

> On Aug 14, 2009, at 9:42 AM, Dave Morin wrote:

>> Frances,

>> Please meet the CEO of TechCrunch, Heather Harde. She is absolutely  
>> wonderful.

>> Heather,

>> Frances is also wonderful and gave me my first job in Silicon Valley  
>> at Apple. She now does neat things with content and the publishers of  
>> the world and getting them to think differently about the future.  
>> She's brilliant and a visionary.

>> Hope you guys can connect.

>> Dave

>> On 8/14/09, Frances Cairns <frances@thecairngroup.com> wrote:

>>> Hi Dave--- My client Disney is launching a new digital product and  
>>> they want to talk to the guys at tech crunch who are launching their  
>>> reader product. Do you have any contacts at a high enough level  
>>> that

>>> I could get a segue? F

>>>

>> --

>> ---

>> <http://davemorin.com>

>

# EXHIBIT G

---

**From:** 'Chandrasekar Rathakrishnan' <chandra@fusiongarage.com>  
**To:** Michael Arrington <editor@techcrunch.com>  
**Sent:** 8/3/2009 7:10:48 AM  
**Subject:** Re:

Mike,

Am available to chat on the phone today pst. Will 530 pm PST work for you ? else, will make myself available at 5 pm. pls let me know.

I sincerely hope that you do not shut the project down. I did not expect the ST article to have such reach within US. again, i am sorry for what happened.

am too far down the road to make a U-turn right now on this project. if you do want to move forward and shut project down, then I have a proposal which could hopefully lead to a

compromise.

let's chat later and figure. thanks, chandra.

On Mon, Aug 3, 2009 at 4:08 PM, Michael Arrington <editor@techcrunch.com> wrote:

we need to talk on the phone tomorrow afternoon PST time. I plan to shut the project down. I want to discuss the post before it goes live, and how we are unwinding the relationship.

Are you free at 4 or 5 pm Calif time?

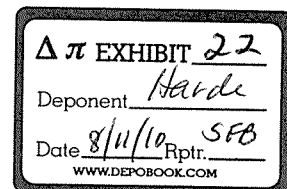
Mike

# EXHIBIT H

---

**From:** Michael Arrington  
**Sent:** Wednesday, October 22, 2008 03:32 PM  
**To:** Steve Pearman  
**CC:** Heather Harde  
**Subject:** hawaii!  
**Attachments:** FG\_CrunchPad.pdf; confidential- status of crunchpad oct 08.ppt

I hear you are here at the conference. See attached status update (see powerpoint first). let's discuss in person.



# CrunchPad Update

October 2008

confidential

# Progress To Date - Announcement

- Announced project on July 21, thousands of "Aha!" comments over next few days.

- [faded text]
- [faded text]
- [faded text]
- [faded text]

QuickTime™ and a decompressor are needed to see this picture.

# Prototype A

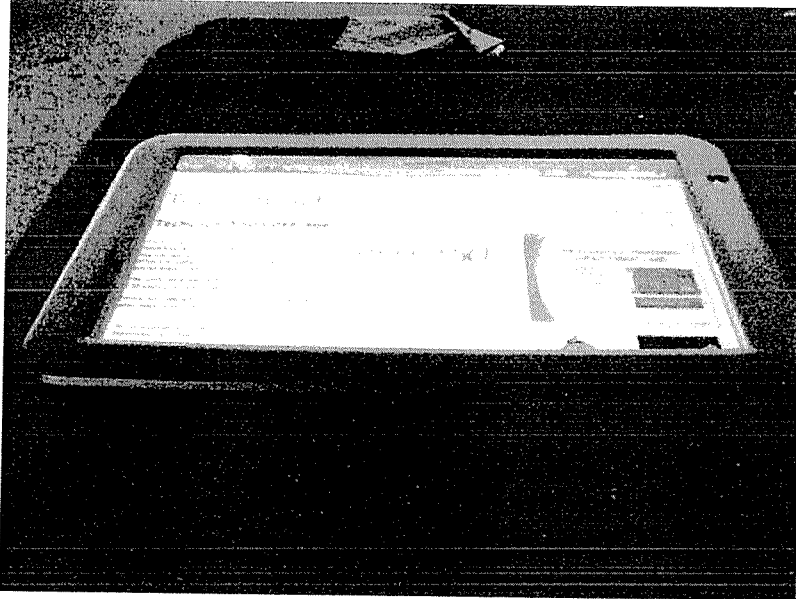
- Built working prototype and announced on August 30, five weeks later.
  - 12 inch touchscreen, boots right to browser





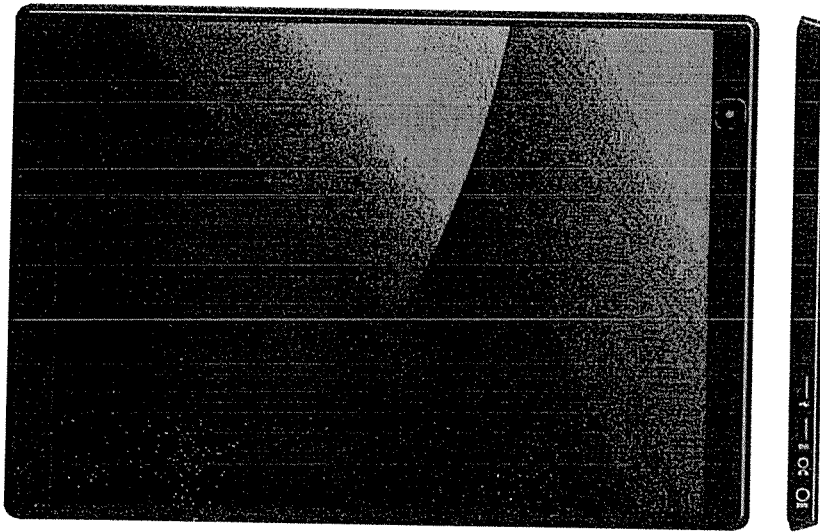
# Prototype B

- Evolving the ID: Non-working Prototype B finished in early September.



# Current ID Work

- Working through ID ideas to envision final product. See mockups (separate document).



# Current BOM

- Current bill of materials estimates per unit costs (all in) of around \$292. We believe we can reduce this by \$50.
- See associated BOM.

# Software Status

- In addition to internal team, we're working with a Singapore startup that has developed a kick ass working prototype - linux kernel, webkit based browser.
  - 10 second boot time to browser
  - 24 MB software footprint
- We will either acquire the startup (or hire the team), or outsource and own IP.

# Additions To Team

- In addition to Heather Harde and Michael Arrington, we have two full time, senior assets:

Louis Monier is best known as the founder, CTO, product guru and spokesperson for AltaVista. Launched in 1995 AltaVista was the first truly modern Internet search engine. Louis was born and educated in France where he got his Ph.D. in 1980. He then spent the early part of his career doing research at Carnegie-Mellon University, XEROX P.A.R.C. and Digital Western Research Laboratory, working mostly on early VLSI design and CAD tools. After AltaVista he was CTO and VP of engineering for BigVine, a Kleiner-Perkins backed start up in the barter space. He then rebuilt the search back-end of eBay, providing users with real-time updates while saving literally billions of dollars in operating costs. Louis then spent two years at Google, building a widely-used internal search engine, and recently served as VP of Products for Cuil.



Kahmin Teh- Prior to this role, Kahmin Teh was Product Marketing Director at Daedalus Systems, LLC, a company he co-founded with other veteran Silicon Valley professionals. He specializes in systems integration of engineering solutions, and providing OEM turnkey systems in support of product launch and customer enablement. Kahmin brings with him almost 20 years of experience in the high technology industry with over 16 years in processor and networking companies such as AMD and AMCC. He had held various engineering, marketing and management positions including responsibilities for multi-location and cross-functional teams. Kahmin has a BSEE from Southern Illinois University and completed his MSEE coursework at the University of California at Davis.



# Current Goals

- Finish five beta units with hardware lockdown and beta software
- Close financing to hire additional team

# CrunchPad Product Design Concepts for TechCrunch



© Fusion Garage 2008  
TechCrunch 'CrunchPad' Concepts  
18 October 2008

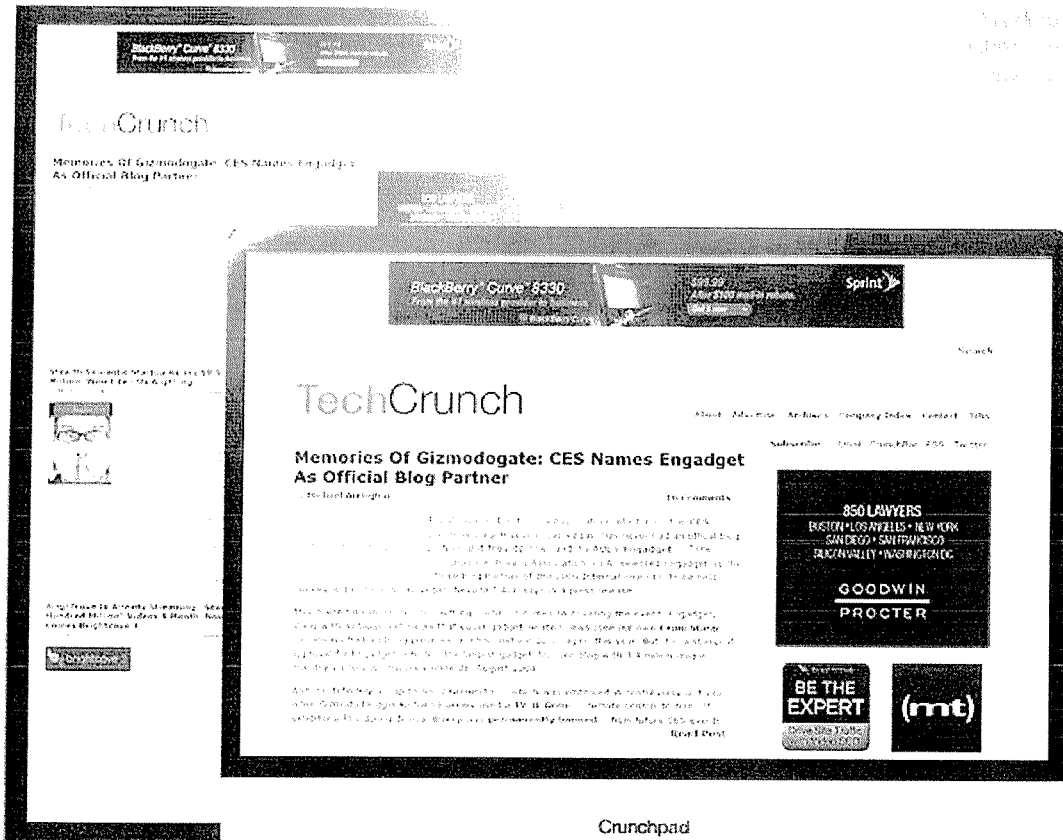
Confidential

TC00004117

# Concept 1

# Palm Cradle



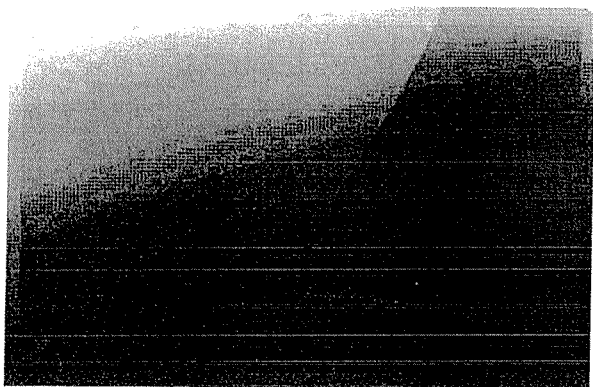


Crunchpad

Crunchpad

Ergonomic Design

The slightly elevated backrest  
curves the spine, reducing the  
weight of the upper body on the  
lower back, and provides a  
firm support for the neck.



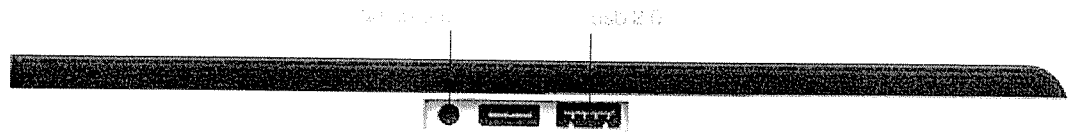
Crunchpad



Slipping one hand beneath the protruded  
area while the palm follows the bulging  
curve of the table's back gives stability  
for most postures.



Figure 1-1  
USB



Change USB Connector

USB



www.fujitsu.com

# Summary

This design provides a unique way to hold a tablet that attracts interest and awareness. The device can easily be formed from a single piece of material, allowing the general user moving away from products together or appliances.

The curve allows 1 hand to cradle the tablet, giving users a free hand to interact with the touchscreen.

Con:

The curved form, the back was built in the tablet is very precise, it is not possible to hold.

The curved form and the design of the tablet is not suitable for use in a public place, it is not possible to hold.

# Concept 2

# Picture Frame



# TechCrunch

## Memories Of Gizmodogate: CES Names Engadget As Official Blog Partner

By Michael Sautter

It's a little over a year ago that CES named Engadget as its official blog partner. At the time, the company was just a small startup with a few hundred employees and a modest following. Today, Engadget is a major player in the tech blogosphere, and CES is a major player in the consumer electronics industry.



## Stealth Semantic Startup Raises \$1 Million, Won't Tell Us Anything



By Michael Sautter

A stealth startup called Semantic has just raised \$1 million in funding. The company, which is based in San Francisco, is working on a new technology that will allow users to search for information in a more natural way. The company is not saying anything about its plans or its technology.

## DirectTV Is Already Streaming 100 Million Videos A Month, Claims Brightcove

By Michael Sautter

Brightcove, a video hosting and distribution company, has announced that DirectTV is already streaming 100 million videos a month. Brightcove claims that this is a significant milestone for the company, and that it is a testament to the power of video in the digital age.

# TechCrunch

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By Michael Sautter

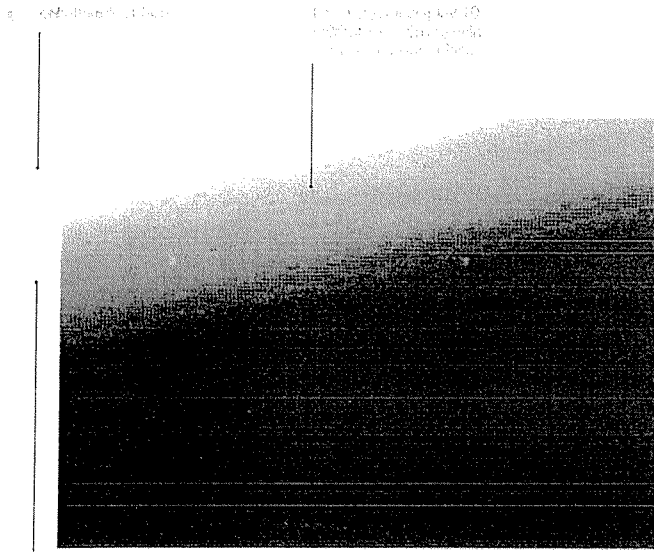






Specifications

ANSI Z39.10-1993



1.5" (38.1mm)  
 0.5" (12.7mm)

0.5" (12.7mm)  
 0.5" (12.7mm)

0.5" (12.7mm)

9.75" (248mm)

0.05" (1.3mm)

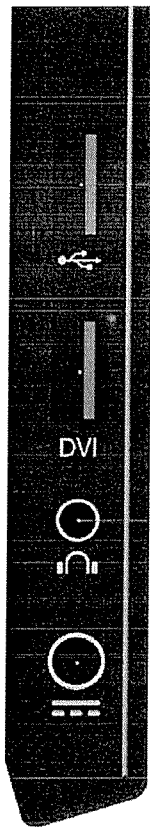
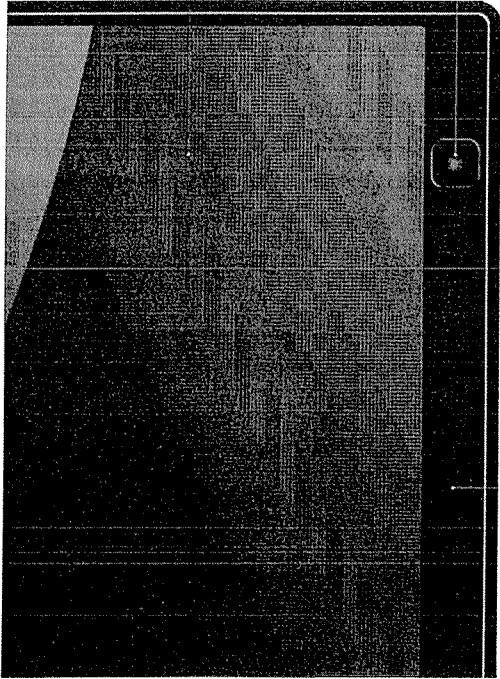
# Concept 3 Navigator

This screen design was prepared as a full layout prototype in preparation of work to design the final site.

The design includes a full range of content and features to ensure that the design is ready for development and testing.







Specifications

Dimensions

Weight  
1.5 kg (3.3 lbs)

Thickness  
12 mm (0.47 in)

Inputs

USB

Power

Volume

Control panel is a touch-sensitive sensor array that can be used to control a wide range of equipment including: Projector system

Video equipment (including DVD)

Other equipment (such as a PC or laptop)

© Fusion Group 2008  
Fusion Group 'ControlPad' Concepts  
18 October 2008

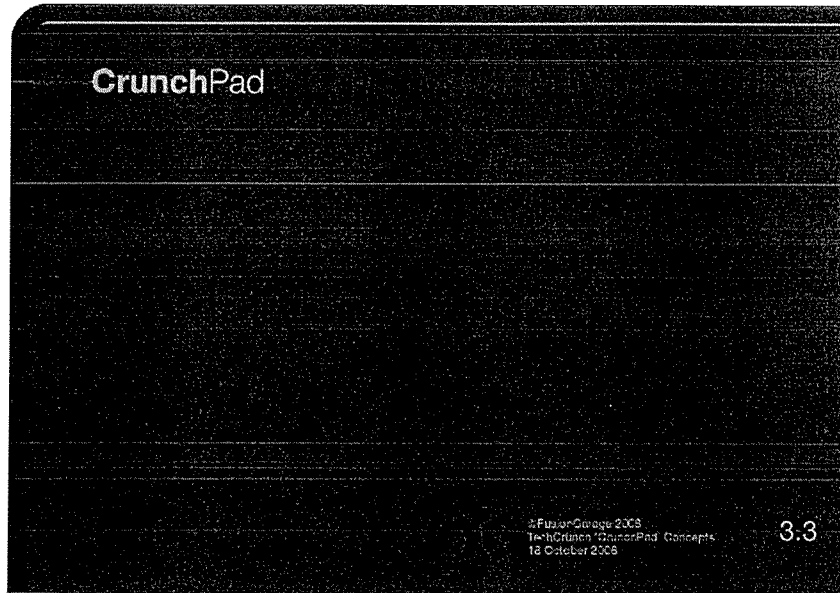
3.2



CrunchPad

CrunchPad

CrunchPad



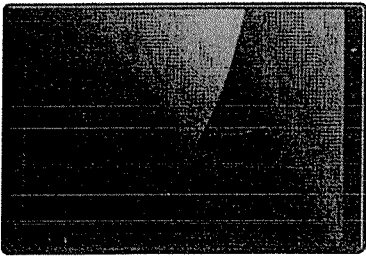
# Keyboard

The custom built gateway keyboard converts all wireless and mobile into the same format as a standard PC keyboard.

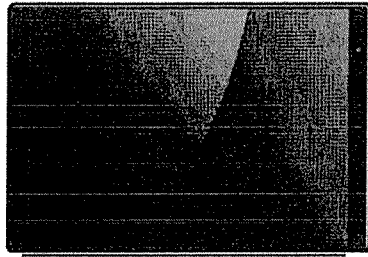
The gateway keyboard is available in a variety of colors and finishes. The gateway keyboard is available in a variety of colors and finishes.



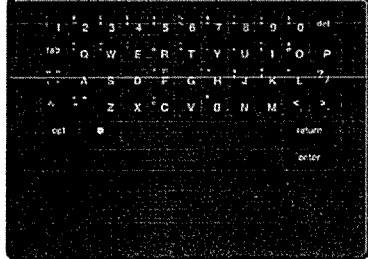
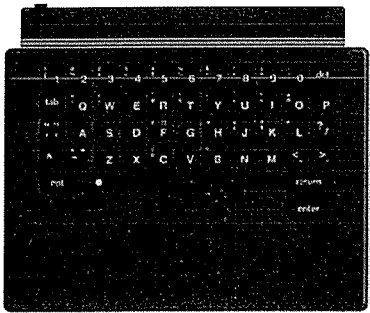
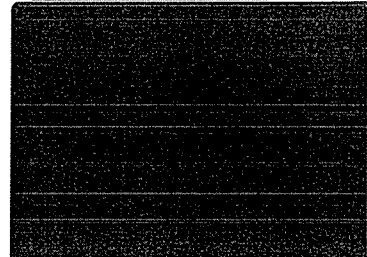
APNF



KeyPad



CPA-1







# Summary

An earlier elongated form factor design was aesthetically following the general trend of moving away from boxy tv sets and computer monitors towards a more sleek elongated design such as the new range of apple monitors.

When held in a landscape orientation the left and right hand edges provide an area for the thumbs to rest when not interacting with the touch screen.

The addition of a navigator button allows users to quickly scroll web pages, navigate back and forwards between webpages and call up the url bar all using 1 button. The keyboard enables the tablet to become a laptop.

# EXHIBIT I

---

**From:** Michael Arrington  
**Sent:** Tuesday, December 09, 2008 10:29 AM  
**To:** Heather Harde; louis monier  
**Subject:** new OS for netbooks

<http://www.techcrunch.com/2008/12/09/netvibes-founder-building-iphone-like-operating-system-for-net-books/>

Tariq pitched me on using it for the tablet. It doesn't work for what we're doing, but it's a cool UI and if FG give us any crap about terms we should suggest they are our alternative.

# EXHIBIT J

**From:** 'Nik Cubrilovic' <nik@techcrunch.com>  
**Sender:** nik@devtap.com  
**To:** Michael Arrington <editor@techcrunch.com>  
**Sent:** 8/18/2009 8:44:49 PM  
**Subject:** Re: Quick Update On Chandra/FG situation

quick update on the rest of my day yesterday and this morning so far:

- \* I met a guy called James Chan who works for a local VC firm (Walden)
- \* told me that Chandra's reputation is horrible
- \* I was getting advice from him, going through the diff scenarios
- \* his conclusion/advice was to setup local sing co. and hire Chandra's guys
- \* said that gov help would be very easy with \*everything\*
- \* spoke for hours, he is an excellent local contact to have as he knows everyone as well and can help us route around
- \* Met with NUS which is the university, and their program for investing in startups
- \* again conclusion here is that grants etc. are readily available, we just have to tell them what we want
- \* they are an incubator, so take office space there with other startups etc. etc.
- \* while I was there I met with 4 startups in quick succession. ill need to get these guys into a further update when i get bcaak in bcause 1 in potential TC 50, another can build a TC iphone app with our content on it for free (and solve all our mobile stuff, including custom ads etc.)
- \* met with the Bansea angel investors network - 7 guys in Singapore who are mostly foreigners. very very easy sell on the crunchpad to the point where he almost wet himself. apparently he emailde us asking to invest a while ago. getting back to me today on debt, but said that the first tranche of debt from the government was 'easy'
- \* about to run to meet another local government guy. he is like a biz dev guy for Singapore and is going to take me through the setting up a local co. etc.
- \* overall, im starting to see what this could look like post-FG and have the foundations setup for what we do enxt

On Wed, Aug 19, 2009 at 2:28 AM, Michael Arrington<editor@techcrunch.com> wrote:  
> if you're around lets discuss this.

>  
> On Aug 17, 2009, at 9:02 AM, Nik Cubrilovic wrote:

>  
>> Have you spoken to Chandra in the past few days? Just want to know  
>> what he does doesn't know so far. If you let me run with this, ill  
>> meet with him tomorrow and between his recently-found frankness, my  
>> new contacts in the sing government and the local VC's/investors I  
>> have met I am sure I can get this all back on track. I can get  
>> everything here in Sing to the point where it is all prepped so we are  
>> ready to pull the trigger, come back there meet with you guys, work  
>> out what we are going to do and then decide if we either do nothing or  
>> proceed under a new form with:  
>>  
>> \* new sing company crunchpad with a parent co. in the USA  
>> \* debt raised from Gov / local investors  
>> \* FG team under that co. new and trimmed up  
>> \* shop the hardware spec around  
>> \* find a role for chandra  
>>  
>> option two is we kill the project and fusion garage also dies (his  
>> talk about raising money to do it himself i think is highly unlikely)  
>>  
>> option three is we just poach his guys, run it ourselves  
>>  
>> there is no way we can continue the way things have been. i really  
>> think option 1 with integrating everything into new co's, having the  
>> sing gov put money in (the \$250k initial grant they do is apparently a  
>> formality, and we could get that in a matter of days with just the

CONFIDENTIAL

EXHIBIT NO. 9  
MICHAEL ARRINGTON  
APRIL 20, 2010  
J.W. HARBIDGE, CSR

TC00000476

```
>> paperwork sorted).
>>
>> if i was making decisions based on crunchpad being mine alone, i would
>> run with option 1 and would do it asap so that the timeline doesn't
>> slip further
>
>
<?xml version="1.0" encoding="UTF-8"?>
<!DOCTYPE plist PUBLIC "-//Apple//DTD PLIST 1.0//EN"
"http://www.apple.com/DTDs/PropertyList-1.0.dtd">
<plist version="1.0">
<dict>
<key>date-sent</key>
<real>1250653489</real>
<key>flags</key>
<integer>8590196097</integer>
<key>original-mailbox</key>

<string>imap://editor%40techcrunch.com@imap.emailsrvr.com/INBOX/Folders/TechCrunch/crunchpad</string>
<key>remote-id</key>
<string>767</string>
<key>subject</key>
<string>Re: Quick Update On Chandra/FG situation</string>
</dict>
</plist>
```

# EXHIBIT K

**To:** Michael Arrington[editor@techcrunch.com]; Nik Cubrilovic[nik@techcrunch.com];  
**Subject:** FW: Phone discussion-Pls confirm  
**Sent:** Thur 8/27/2009 10:20:31 AM  
**From:** brian@techcrunch.com

Summary of his understanding. We can leave it as is or adjust the language to state that NRE and volume commitment to be negotiated after Market tested. I will also correct to state that Crunchpad name and all related marketing to date is off the table.

Keep in mind that they could also decide to walk away and attempt to get the FG IP in the cheap. This product would be in the Asus wheel house.

-----Original Message-----

**From:** Leo\_Tsai@pegatroncorp.com  
**Sent:** Thursday, August 27, 2009 6:14am  
**To:** brian@techcrunch.com  
**Subject:** Phone discussion-Pls confirm

Hi Brian,

It was nice to have an open discussion with you tonight. Right now we are in an important and critical evaluated stage. In order to deliver right information to my management, I would like to summarize our communication by mail. Again, pls understand initial commitment has not been changed by Pegatron.

Of course, this mail is only between Pegatron and Techcrunch. If there is something wrong in my summary, pls correct me. Thanks!

Based on phone call today, Techcrunch came up with 2 alternatives. Pegatron need to officially reply by next Monday (10/31).

- **Techcrunch's solution:**

Based on Techcrunch's initial understanding, there was no NRE or volume commitment. There was mis-communication between Fusion Garage and Techcrunch. The selling plan Techcrunch have was to build 1K in PVT stage and test market reaction. Then, Techcrunch will generate 1 to 3 years forecast based on this pre-sales. If Pegatron is willing to go back to initial Techcrunch's understanding (No NRE / No volume commitment), then, Techcrunch will merge Fusion Garage as a plan and keep supporting this business.

- **Fusion Garage's solution:**

If Pegatron is not willing to change current agreement and MOU (\$700K NRE / 1200K life cycle), Techcrunch will drop out this business and stop merging Fusion Garage. Fusion Garage will not get any supporting from Techcrunch or certain famous business units. But, Fusion Garage may keep doing business with Pegatron by itself.



# PEGATRON

PEGATRON \* UNIHAN CORPORATIONimage001.gif37639

F: 886.2.81437945

M: 886.0970087639

No. 76, Ligong St.,

Beitou District, Taipei City 112

台北市北投區立功街76號

# EXHIBIT L

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

INTERSERVE, INC., dba TECHCRUNCH,  
a Delaware corporation, and  
CRUNCHPAD, INC., a Delaware  
Corporation,

Plaintiffs,

vs.

No. CV-09-5812 RS (PVT)

FUSION GARAGE PTE, LTD., a  
Singapore company,

Defendant.

---

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

VIDEOTAPED DEPOSITION OF HEATHER A. HARDE

Redwood Shores, California

Wednesday, August 11, 2010

Reported by:  
SUZANNE F. BOSCHETTI  
CSR No. 5111

Job No. 140501

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

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a Delaware corporation, and  
CRUNCHPAD, INC., a Delaware  
Corporation,

Plaintiffs,

vs.

No. CV-09-5812 RS (PVT)

FUSION GARAGE PTE, LTD., a  
Singapore company,

Defendant.

---

Highly Confidential, Videotaped Deposition of  
HEATHER A. HARDE, taken on behalf of Defendant Fusion  
Garage PTE, LTD, at 555 Twin Dolphin Drive, 5th  
Floor, Redwood Shores, California, beginning at 9:22  
a.m. and ending at 6:12 p.m., on Wednesday, August  
11, 2010, before SUZANNE F. BOSCHETTI, Certified  
Shorthand Reporter No. 5111.

1 BY MR. STERN:

2 Q. This is an email -- it's entitled "fuck"  
3 from Mr. Arrington. I don't even know who it's to.  
4 It says:

5 "Do you realize how delicately I've  
6 handled press? I refrain from talking  
7 about it on Charlie Rose. Then you  
8 give everything we have to a Singapore  
9 newspaper."

10 And then I think -- I don't know who that's  
11 to. Do you know who that's to?

12 MR. BRIDGES: Objection. Lacks foundation.

13 THE WITNESS: I don't know who that's to.

14 BY MR. STERN:

15 Q. And then Mr. Arrington sends an email, it  
16 looks like to himself, copied to Chandra, copied to  
17 somebody named bk@duzzit.com, copied to you. Who's  
18 bk@duzzit.com?

19 A. That's the email address for Brian Kindle.

20 Q. Okay. And then it says:

21 "You tell the press what you think  
22 the price is? What the hell."

23 Right?

24 Now, Mr. -- Mr. Arrington had published in  
25 his very first blogs about the product what he

1 thought the price point of the product was going to  
2 be, didn't he?

3 A. He -- if I recall his post correctly, there  
4 was a vision for what he wanted the price to be less  
5 than.

6 Q. And what was that price?

7 A. I think it was \$200.

8 Q. Have you ever -- you're under oath, so I can  
9 ask you this. Have you ever come up to the  
10 conclusion that you thought that Mr. Arrington was  
11 arrogant?

12 MR. BRIDGES: Objection. Irrelevant. Calls  
13 for opinion.

14 THE WITNESS: No.

15 MR. BRIDGES: Vague and ambiguous.

16 BY MR. STERN:

17 Q. You don't believe that Mr. -- have you ever  
18 come up with the opinion that Mr. Arrington has a  
19 temper?

20 MR. BRIDGES: Objection. Vague and  
21 ambiguous. Same -- and other same objections.

22 THE WITNESS: Yes.

23 BY MR. STERN:

24 Q. Have you ever been the object of that  
25 temper?

1 MR. BRIDGES: Objection. Vague and  
2 ambiguous. Lacks foundation.

3 THE WITNESS: Yes.

4 BY MR. STERN:

5 Q. Have you ever heard Mr. Arrington being  
6 described as a bully?

7 A. I don't know if I've heard that.

8 Q. It was after this event on July 30th, 2009,  
9 when Mr. Rathakrishnan talked to the Singapore press  
10 about the product in development that Mr. Arrington  
11 decided to sic Brian Kindle and Nik Cubrilovic to go  
12 to Singapore, right?

13 MR. BRIDGES: Objection. Argumentative.  
14 Lacks foundation.

15 BY MR. STERN:

16 Q. That's the question the jury is going to  
17 hear.

18 MR. BRIDGES: Please let me finish my  
19 objections. All right? So -- so can you please --  
20 or I'll continue the objections. Argumentative.  
21 Lacks foundation. Vague and ambiguous. Go ahead.

22 THE WITNESS: I can't agree with your  
23 characterization of "sic."

24 BY MR. STERN:

25 Q. All right. How about this. It was after

# EXHIBIT M



---

**From:** Alysia  
**Sent:** Monday, August 25, 2008 06:21 PM  
**To:** Michael Arrington  
**CC:** Nik Cubrilovic; Heather Harde  
**Subject:** Re: Latitude XT for screen part

Couldn't get exact cost from this guy. But will get it from him first thing tomorrow morning (they're in TX so it'll be early). I agree, it's silly for them to not give info when they're trying to sell parts.

Don't trash them yet. I get the feeling this guy was a bit of a barrier -- but the company and screen look pretty cool. Let me try some things.

AA

On Mon, Aug 25, 2008 at 6:12 PM, Michael Arrington <marrington@gmail.com> wrote:

**fuck that, bulldoze around this problem. find out who their investors are.** get their head to where via is. if they don't move, screw it, move on.

also, what is the exact cost? above \$100 isn't a problem, above \$150 is.

**i may just trash them on techcrunch. dicks.**

On Aug 25, 2008, at 6:10 PM, Alysia wrote:

They won't even send us a display w/out signing an NDA. I think Cameron found one for \$1000 on ebay.

When he sends the NDA, I'd like to have a mtg w/you, Michael, Nik and the founder/CEO of this company. The sales guy is a barrier who is process driven, and we need to get to the decision maker.

Also, the sales guy warned me that the screens at 12.1" are >\$100 for mfcts cost.

Cameron cannot order until he has an okay from Heather -- that was what I told him.

- AA

On Mon, Aug 25, 2008 at 5:35 PM, Michael Arrington <editor@techcrunch.com> wrote:

Aren't these \$2500? Won't ntrig send us one?

Sent from my iPhone

On Aug 25, 2008, at 4:26 PM, Alysia <alysiaa@gmail.com> wrote:

Hi Cameron,

Thanks for your help. Please check with Heather, but order a Dell Latitude XT so we can cannibalize the screen for our prototype. Here's a link to an article about the XT we want to order:

[http://www.nytimes.com/2008/08/24/technology/24proto.html?\\_r=1&partner=rssnyt&emc=rss&oref=slogin](http://www.nytimes.com/2008/08/24/technology/24proto.html?_r=1&partner=rssnyt&emc=rss&oref=slogin)

Please order a refurbished one if you can as they work and are considerably less expensive. Expedite shipping if possible to overnight or next day.

Thanks!  
Alysia

# EXHIBIT N

**From:** <brian@techcrunch.com>  
**To:** Michael Arrington <editor@techcrunch.com>  
**CC:** Nik Cubrilovic <nik@techcrunch.com>; Heather Harde <heather@techcrunch.com>  
**Sent:** 8/31/2009 1:52:59 AM  
**Subject:** Re: Update on Pegatron

Pegatron got back to me... twice.

1st call:

They mentioned that they are not able to do this without the upfront NRE. Mentioned that decision is at the CEO level. Mentioned that at the time the agreement was made FG told them they needed 24 hours to confirm the upfront NRE change in order to get agreement from TC. 24 hours later, FG told Peg that all were in agreement on changing to up front NRE assuring Peg that TC was in agreement. They mentioned several times that FG was going to keep driving the product and they repeatedly asked if TC was OK with Peg continuing to work with FG to get it done. 4 times they asked to be exact. It seemed like they were aware that there was a possibility that TC would continue to cooperate with them continuing to work with FG. I strongly sense that is a conversation that happened. Each time I told them that Michael was feeling very betrayed and that I would need to communicate the conversation to him. In the end, he mentioned that they understand that this is a TC idea and that TC owns CP and that if TC wants them to back away from FG, they will do so at TC's request. **They are obviously hoping that this stance will keep the negative guns pointed away from them.**

2nd call, 15 minutes later:

They asked how we would like to them to continue interfacing with FG. I told them to conduct business as usual until I get a chance to sync with Michael and that I would call once I've done so.

Need to determine next steps. I suspect that BBY will not be able to help unless they are willing to pay the NRE. Peg does not care who pays them, **but they most certainly do not like being in Michael's cross-hair and are willing to walk away and versus taking on negative press or additional financial risk.** I would not be surprised if Peg would quietly waive the NRE on the back end to FG in exchange for ownership if TC were to continue pushing MKTG efforts and those efforts were positive. Could push to get the samples for TC50 to gauge response in advance of paying any NRE. This will strengthen FG hold on the product, but would open the door to alternate design for production if that path is to be pursued.

-----Original Message-----

**From:** "Michael Arrington" <editor@techcrunch.com>  
**Sent:** Sunday, August 30, 2009 5:48am  
**To:** brian@techcrunch.com  
**Cc:** "Nik Cubrilovic" <nik@techcrunch.com>; "Heather Harde" <heather@techcrunch.com>  
**Subject:** Re: Update on Pegatron

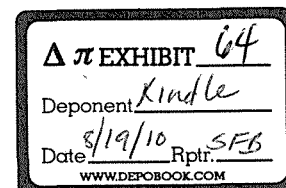
fingers crossed.

On Aug 30, 2009, at 3:46 AM, [brian@techcrunch.com](mailto:brian@techcrunch.com) wrote:

Just finished final conversation with Peg. Message on positive communication to globe with Peg executives involved with TC50 versus negative communication with shutdown of project received 14.5 hours prior to internal management meeting... Let us see how it is received.

-----Original Message-----

**From:** [brian@techcrunch.com](mailto:brian@techcrunch.com)  
**Sent:** Friday, August 28, 2009 12:24pm  
**To:** "Nik Cubrilovic" <nik@techcrunch.com>  
**Cc:** "Michael Arrington" <editor@techcrunch.com>; "Heather Harde" <heather@techcrunch.com>  
**Subject:** Re: Update on Pegatron



Yes, and when I also mentioned that I thought FG was attempting to skim off the top based on their unwillingness to share data and the large numbers they were verbally mentioning, I was certain that to be the case. When I discovered their initial BOM cost to me, which they would never email to me, was higher than that emailed direct from Peg, it was most gratifying to slam their fingers in the lid of the cookie jar. They were obviously planning on pocketing \$20-\$30/unit at the time they announced the \$400 price to the world. Every cockroach involuntarily scrambles when the light comes on!

The lesson for the day on the HW/MFG business is only work with people that you trust! It is just too easy to skim as all partners

want additional profits and there are too many places to hide \$\$ . Always assume the worst, especially when times are good, and you will never be surprised or stop hunting for it.

Not out of the woods with Peg yet... but slightly better outlook than 48 hours ago. I'll hold off celebrating until the final word is back from them.

-----Original Message-----

From: "Nik Cubrilovic" <[nik@techcrunch.com](mailto:nik@techcrunch.com)>

Sent: Friday, August 28, 2009 2:09am

To: [brian@techcrunch.com](mailto:brian@techcrunch.com)

Cc: "Michael Arrington" <[editor@techcrunch.com](mailto:editor@techcrunch.com)>, "Heather Harde" <[heather@techcrunch.com](mailto:heather@techcrunch.com)>

Subject: Re: Update on Pegatron

adding heather as well

On Fri, Aug 28, 2009 at 2:08 AM, Nik Cubrilovic<[nik@techcrunch.com](mailto:nik@techcrunch.com)> wrote:

> I am taking this as being positive, because from their perspective  
> they could have cut us out 24 hours ago, and it seems that they are  
> going through a very deliberate internal process of figuring out what  
> to do, and the questions he asks tend to lead to them going with us.

>  
> For them it comes down now to internal problems and a project to work  
> on, or much bigger external problems and no project

>  
> Once you narrow it down, almost a no brainer - but I see how they are  
> searching for an alternate escape hatch at the moment (ie. they know  
> they have to go with us, just checking one last time incase there is a  
> way out). I can imagine that they have been speaking to Chandra as  
> well during this period, or might have enough already to know that FG  
> can not carry this on their own

>  
> The thing that surprises me Brian is that we are getting pretty good  
> at knowing the Asian playbook. Remember the initial convo about out  
> peg approach we had in Singapore? It played out almost exactly the way  
> we expected it - I am thinking it might play out the same way here  
> again (ie. they will come back with 'yes lets do 1000 with you now')

>  
> nik

>  
> On Fri, Aug 28, 2009 at 2:01 AM, <[brian@techcrunch.com](mailto:brian@techcrunch.com)> wrote:

>> 2.5 hour marathon call with Peg just finished, and we are still expecting a  
>> call on Sunday with the final answer. I did not respond to the email from  
>> them and there were 2 urgent voice-mails on my cell before I responded and  
>> apologized for being busy... on purpose.

>>  
>> Call &A summary:

>> If Peg chooses Techcrunch Option is NRE truly \$0? I reiterated that we  
>> needed to get back the original deal which was NRE amortized over production  
>> volume and time. He knows that was the original structure and it would  
>> weaken our position if we insist on changing from the original to \$0.

>>  
>> Could NRE be amortized over 100K units? I responded that adding \$7 to the  
>> cost of the initial 100K units would not work and that it will need to be a  
>> sliding scale based on volumes predicted by the pre-sale 1K units. The  
>> sliding scale would guarantee that the product would not be burdened up  
>> front with payment larger penalties as that would be counter-intuitive to  
>> building and nurturing a successful business. I told him that expectations  
>> were set with us that the NRE recovery would not exceed 3 years of  
>> production volume. The sliding scale allows us to minimize payments in the  
>> beginning when volumes are low resulting in the least impact to per unit  
>> cost adder. He understood.

>>  
>> If they chose the FG path would TC give them a letter stating that we were  
>> no longer involved? I told him that the hail storm of negative press would  
>> make it obvious to the world that we were no longer involved and that his

>> **without us is pointless.** I expect them to somehow work out going back  
>> to the old scenario, only communicating with us directly from now and  
>> cutting FG out of that loop.  
>>  
>> how the hell they believed Chandra would sell 1M units without us, I  
>> will never know.  
>>  
>> On Thu, Aug 27, 2009 at 2:54 AM, <brian@techcrunch.com> wrote:  
>>> I did communicate to Pegatron as we discussed yesterday in detail. Here  
>>> is  
>>> the summary of that conversation:  
>>>  
>>> We will get their final answer late Sunday/early Monday our time. He  
>>> communicated he though it would be a no go for his MGMNT to change back to  
>>> initial terms, but was not 100% comfortable. We shall see. Details below  
>>> show tone and flow.  
>>>  
>>> Here are those details:  
>>>  
>>> I communicated to Leo the fact that Techcrunch is now feeling like the  
>>> terms  
>>> are changing at the end of the project as we have been communicating the  
>>> need from the start of the project that there would be no NRE up front and  
>>> that we would build the initial 1K units to test the Market with. I also  
>>> communicated that expectations were set to TC that these terms were agreed  
>>> to and not a problem. I told him that there was anger and resentment on  
>>> our  
>>> side based on terms changing at the end. I explained very clearly that if  
>>> the initial understanding of the agreement that was communicated to us, no  
>>> up front NRE and 1K units for pre-sale, was not met that TC would be  
>>> forced  
>>> to shut support for the project down.  
>>>  
>>> He mentioned that FG did tell them that TCs expectation was to test the  
>>> market with 1K units but that Chandra was comfortable committing to the 1M  
>>> unit annual sales based on the all of the other customers he had. I again  
>>> mentioned that almost all the customers at the table were brought to the  
>>> table by and interested in partnering with TC on the TC Crunchpad based on  
>>> public feedback to the initial articles. I reiterated that at no time was  
>>> a  
>>> 1M unit annual volume communicated as a required term to TC and that it  
>>> would contradict the need for 1K pre-sale units for Market testing.  
>>>  
>>> He continued to refer to discussions and agreements made with Fusion  
>>> Garage  
>>> and I continued to explain that Techcrunch is feeling surprised at the end  
>>> of the project. He eventually got the fact that TC was not being kept in  
>>> the loop with communications and is just now starting to get an  
>>> understanding with the MOU terms being recently released to us. He then  
>>> started referring to the 2 scenarios. The original, which is expectations  
>>> set with TC, and the current which is completely changed and agreed to by  
>>> FG  
>>> and Peg. He told me that his management would not support going back to  
>>> the  
>>> original scenario. I told him that I would instruct Michael that Peg does  
>>> not agree to work with TC on the original scenario terms thus forcing a  
>>> shut  
>>> down. He then asked until our Sunday, their Monday to get final feedback  
>>> from his management team as they were at an off-site.  
>>>  
>>> I mentioned that if they did decide to work on the original scenario terms  
>>> that all of the partners that TC brought to the table, including Best Buy  
>>> would continue to back the project with the extreme vigor shown to date  
>>> and  
>>> that the TC marketing engine would fuel great positive coverage globally.

>> management team would know clearly from that global press exactly where we  
>> stood. I also mentioned that the ripple effect of the negative press would  
>> drive all of the larger volume partners we brought to the mix away. He  
>> asked would there be any negative press towards Pegatron. I told him that  
>> the sense of betrayal was the strongest I have ever seen that there is pure  
>> anger where a strong sense of partnership used to be. I mentioned that they  
>> should assume so but that I argued for one chance to try to fix it before  
>> shutting it down and educating the world why we are doing so. Michael, you  
>> are now the angry guy and I am trying to help them stay off your radar  
>> screen. He asked if I would please tell you that they have been consistent  
>> in their stance and that FG was not communicating properly. I told him that  
>> I would do so but that deceit was different than poor communication of  
>> course he implied I meant on FG's behalf.

>>  
>> What would happen to FG if they chose the TC option? I told him that the  
>> changes were already in play referring to the fact that KS and Stuart have  
>> already transitioned to reporting to me. He asked FG could drive the  
>> project if TC backed out. I told him his finance department already had the  
>> answer to the questions and it was moot. He obviously got it. He stated  
>> they are worried about a repeat situation where FG makes a commitment and it  
>> causes turmoil. I told him that if the answer is to stick with FG, we will  
>> shut it down and they would need to rely on FG and mentioned the negative  
>> press again. If they want to support TC, they will only interface with TC  
>> on any business operation related topics and reinforced that FG would not  
>> have the authority to make any binding commitments.

>>  
>> Are there any other issues? I told him that we would expect them to  
>> continue to drive cost reductions on the areas of the BOM they can impact,  
>> that we expect to verify and impact the tooling costs, and that we needed to  
>> have protos for TC50.

>>  
>> Would they be held responsible for the \$299 street price if Intel and  
>> Display combo did not come through? I told him that we would not hold  
>> Pegatron responsible for costs out of their control. He asked if we had  
>> gotten reductions there. I told him that we are in conversations with the  
>> top executives of the major cost centers and that we were confident that we  
>> will get close enough to our cost targets that we would avoid major public  
>> outcry but that we would obviously not be able to take a profit on the HW.  
>> He asked if we backed out would we share the pricing with FG. I told him  
>> that he knew very well that, contractually, the vendors would not allow me  
>> to share our TC pricing with them. Again with the chuckle... He was  
>> testing me.

>>  
>> BTW, I am not starting price discussions with component vendors until they  
>> indicate conformance as it would be pointless to beat the vendors then shut  
>> it down if they were to comply.

>>  
>> He mentioned that the biggest issue is one of saving face. Since the head  
>> of the BU communicated that they had changed the NRE to up front to  
>> eliminate the risk, they will look like clowns if they change it now. I  
>> told him that I understood, but I would prefer internal strife to this type  
>> of potential external strife.

>>  
>> Losing face is tough for them culturally, let's see what happens... Next  
>> update late Sunday.

>>  
>>  
>> -----Original Message-----  
>> From: "Nik Cubrilovic" <[nik@techcrunch.com](mailto:nik@techcrunch.com)>  
>> Sent: Thursday, August 27, 2009 9:34am  
>> To: [brian@techcrunch.com](mailto:brian@techcrunch.com)  
>> Cc: "Michael Arrington" <[editor@techcrunch.com](mailto:editor@techcrunch.com)>  
>> Subject: Re: Update on Pegatron

>>  
>> You can see from his questions that they recognize that following FG

>>> I  
>>> added that TC/Crunchpad Inc would be the entity that they would interface  
>>> with. However, if they say no forcing a shut down, TC would need to begin  
>>> to craft the final communications on the project to the public and get  
>>> prepared for the negative onslaught. A lot of uh huhs on the other end of  
>>> the phone as he took notes. I explained that with TC50 so close that we  
>>> needed time to craft the communications so getting us their final feedback  
>>> by Monday their time was critical.  
>>>  
>>> He then checked with the EA to confirm the MGMNT team would be back in the  
>>> office Monday morning and agreed to the time again. He mentioned again  
>>> that  
>>> he thought they would say no. I then told him that I would then change my  
>>> communication back to Michael and instead of an immediate shut down that  
>>> Pegatron would most likely not agree to the original scenario terms most  
>>> likely forcing a shut down, but the final decision would come late our  
>>> Sunday. Again he was not very comfortable at all in that position.  
>>>  
>>> He asked what would happen if we withdrew our support, and would they then  
>>> work with just FG and how FG would manage to get the product out without  
>>> TC  
>>> support. Before I could answer he quickly asked another if TC would still  
>>> be acquiring FG. I told him that if they force a shutdown, FG would have  
>>> to  
>>> secure funding on their own to fund Marketing activities and to pay Peg  
>>> the  
>>> monies they called out in the second scenario to support the 1M units  
>>> volume  
>>> for which TC was not aware of and that TC would not be involved in the  
>>> process. He mentioned that this would likely damage relationships.  
>>>  
>>> He mentioned that he would talk to FG about this and I told him that TC  
>>> communicated its position to FG and that they were aware. I told him that  
>>> we are consistent in our communication.  
>>>  
>>> He then told me that he understood completely and had no more questions.  
>>> We  
>>> agreed that we would talk again our Sunday.  
>>>  
>>>  
>>>  
>>  
>



