

# Exhibit E

Capital Reporting Company  
Hearing 12-28-2009

1

IN THE U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF  
TEXAS, MARSHALL DIVISION

----- :  
PA ADVISORS, :  
 :  
 :  
 :  
 Plaintiff, : Civil Docket No.  
 :  
 :  
 vs. : 2:07-cv-00480-RRR  
 :  
 :  
 :  
 GOOGLE, INC., et al., :  
 :  
 :  
 Defendant. :  
 :  
 :  
----- :

Washington, D.C.

Monday, December 28, 2009

The above-entitled matter came on for Pretrial  
Conference, pursuant to Notice.

BEFORE: HONORABLE RANDALL R. RADER, Judge

Capital Reporting Company  
Hearing 12-28-2009

<p style="text-align: right;">14</p> <p>1 basically that requires entering a search query. 2 Claim 45 does not have any similar requirement 3 and is also performed by the Defendant. 4 JUDGE RADER: Let me look at Claim 45 for a 5 second, if I may. Okay. I looked at that. 6 As for Claim 1, Mr. Fenster, I happened to look 7 at a federal circuit case today entitled BMC Resources v. 8 Paymentech. It requires all the steps of any claim that 9 is purported to be in French to be performed by a single 10 user. 11 How would you surmount Paymentech for Claim 12 1? 13 MR. FENSTER: Yes, Your Honor. Your Honor, 14 there is -- I am familiar with the case law and generally 15 the law does require that all steps be performed by a 16 single party, but they are -- they require all 17 substantive steps and there is case law that has been 18 developed, as well, where there is an insubstantial step. 19 For example, the provision of a browser. 20 JUDGE RADER: Is there such a thing as a 21 substantial or essential or other more important 22 limitation than other limitations in the claim? 23 MR. FENSTER: Your Honor, I think that what the</p>	<p style="text-align: right;">16</p> <p>1 Is it a drafting problem, you think, in your 2 Claim 1 that has more than one user? 3 MR. FENSTER: Well, the method and the system 4 can certainly be drafted to require only a single user, 5 evidence of Claim 45. This Claim 1 could have been 6 drafted that way by instead of saying providing by a 7 user, receiving from a user. 8 JUDGE RADER: Yes. The Paymentech makes 9 that 10 point itself, I think. 11 MR. FENSTER: Yes. 12 JUDGE RADER: Well, all right. Is there 13 anything further, Mr. Fenster? I don't want to cut off 14 your commentary here. 15 MR. FENSTER: So in early 2000, Google and 16 Yahoo 17 started personalizing Google before Yahoo and the -- we 18 have the various accused products of asserting infringing 19 Claims 1 and 45 and various dependent claims, as well. 20 This is a willfulness case. The patent was 21 provided early on to Google and so that will be part of 22 the case and I can answer any other questions, but I'll 23 leave it there for now.</p>
<p style="text-align: right;">15</p> <p>1 case law requires is that all of the essential steps of 2 the method be performed by a single actor. 3 JUDGE RADER: Now I'm aware that Japanese 4 law 5 makes a distinction between essential claim elements and 6 inessential claim elements. I'm not aware that U.S. law 7 does that. Am I missing something? 8 MR. FENSTER: I -- I think that what the case 9 law provides in the U.S. is that all of the -- the 10 essence of this method is provided. All of the 11 computational aspects of this method are performed by 12 the 13 Defendant. 14 The only thing that is provided by the user is 15 the search request. The -- that is, the user has to 16 provide -- 17 JUDGE RADER: But if that's a limitation of the 18 claim, it would have to be satisfied. Am I right, Mr. 19 Fenster? 20 MR. FENSTER: Yes, Your Honor. 21 JUDGE RADER: I -- I noticed that in the 22 Paymentech case, the federal circuit suggested that 23 claims should be drafted to require a single person to --</p>	<p style="text-align: right;">17</p> <p>1 Fenster. That gives me an overview of -- of your case 2 and let's move on. I'm not sure whether to acknowledge 3 Google or Yahoo first. Would you two help me make that 4 decision? 5 MR. VERHOEVEN: Sure, Your Honor. This is 6 Mr. 7 Verhoeven -- 8 JUDGE RADER: Okay. 9 MR. VERHOEVEN: -- right here, representing 10 Google. I'll just start and Yahoo can fill in, if that's 11 okay. 12 JUDGE RADER: We'll give them their own 13 separate 14 time, Mr. Verhoeven, but you go ahead for now. 15 MR. VERHOEVEN: Thank you. We'll keep this 16 really brief. 17 The 065 patent is very -- bear with me here. I'm 18 dealing with my computer. Has gotten very detailed 19 claims, Your Honor, and it appears to us when we 20 analyze 21 the patent that the innovation, the alleged innovation 22 surrounds the notion of this phrase ♦ linguistic 23 patterns. ♦</p>