

EXHIBIT E

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION

4 NATIONAL FEDERATION OF THE
5 BLIND, the NATIONAL FEDERATION OF
6 THE BLIND OF CALIFORNIA on behalf
7 of their members, and BRUCE F.
8 SEXTON on behalf of himself and
9 all others similarly situated,
10 Plaintiffs,



11 Court File No. C 06-01802 (MHP)

12 -vs-

13 TARGET CORPORATION,
14 Defendant.

15 The Deposition of STEVEN JACOBSON, taken in the
16 above-entitled matter, pursuant to Notice, before Gail M.
17 Hinrichs, RPR and Notary Public, at 710 Marquette Avenue,
18 Bear River Conference Room, in the City of Minneapolis,
19 County of Hennepin, State of Minnesota, on the 31st day of
20 May, 2006, commencing at approximately 9:40 a.m.

21 * * *

1 A. I'm guessing probably maybe a dozen version
2 upgrades.

3 Q. In the last ten years?

4 A. Right.

5 Q. As you have upgraded from one version to the
6 next in the last ten years, have you noticed an
7 improvement in your ability to access the Internet with
8 Window Eyes?

9 MS. ROBERSON: Objection, vague,
10 ambiguous, overbroad.

11 THE WITNESS: Yes, but it's difficult to
12 really make a statement along those lines with all the
13 changes that have existed in the Internet itself, plus
14 screen readers.

15 BY MR. PLUNKETT:

16 Q. Can you identify any changes in Window Eyes
17 that have made accessing the Internet easier for you?

18 MS. ROBERSON: Objection as to form,
19 calls for speculation.

20 THE WITNESS: The use of a browse mode
21 which is -- allows one to look at a page independent of
22 how the page is presented. A frame at a time and so
23 forth. It effectively gives you a cursor to explore the
24 page in a manner similar to how one might look at a
25 document in Microsoft Word or another word processor.

1 BY MR. PLUNKETT:

2 Q. How long has Window Eyes had that capability?

3 A. Oh, perhaps five -- four or five years.

4 Q. Can you identify any other improvements in
5 Window Eyes that have made your ability to access the
6 Internet easier?

7 A. The ability to jump between different types of
8 objects on a screen, links, headings, frames, form fields,
9 check boxes. If one knows what they're looking for, one
10 can jump to that type of a field.

11 Q. How long has Window Eyes had that capability?

12 A. A couple of -- probably two years.

13 Q. Can you identify any other improvements?

14 MS. ROBERSON: Objection, vague,
15 ambiguous. Calls for speculation.

16 THE WITNESS: The ability to work with
17 flash, which is common on web sites. That was another
18 improvement about --

19 BY MR. PLUNKETT:

20 Q. Do you know how long Window Eyes has had that
21 capability?

22 A. Probably two years or so.

23 Q. Any other improvements you can identify?

24 MS. ROBERSON: Same objection.

25 THE WITNESS: No. Those are what come

1 to mind. I can't say there may not be others that would
2 come to mind at some point, but that's all I can think of
3 at the moment.

4 BY MR. PLUNKETT:

5 Q. Have you heard anything about -- withdraw.

6 Do you know whether or not Window Eyes is in
7 the process of producing a new version?

8 MS. ROBERSON: Objection, calls for
9 speculation.

10 THE WITNESS: Yes, but screen reader
11 developers are always producing new versions.

12 BY MR. PLUNKETT:

13 Q. Do you know anything about the new version of
14 Window Eyes that is being worked on?

15 MS. ROBERSON: Objection, calls for
16 speculation, vague and ambiguous.

17 THE WITNESS: I'm involved in their --
18 in their beta program, so I get some knowledge, but we
19 don't know at this point what major features they're
20 planning for the next version. My function is mostly to
21 look for things that get broken in the process.

22 BY MR. PLUNKETT:

23 Q. In what way are you involved in their beta
24 program?

25 A. When they put out a new beta, I download it

1 accessibility easier?

2 MS. ROBERSON: Objection, vague,
3 ambiguous, overbroad, calls for speculation.

4 THE WITNESS: I think there is a greater
5 awareness of how web site design can impact users of
6 different types than there has been in the past. So while
7 web site design has become more complex, more corporations
8 and nonprofits are aware that there are disabled users and
9 users in third world countries with low speed connections
10 and so forth. So in that sense, some things have gotten
11 easier.

12 BY MR. PLUNKETT:

13 Q. Anything else about web site design that you
14 would identify?

15 MS. ROBERSON: Same objection, vague,
16 ambiguous, overbroad, calls for speculation.

17 THE WITNESS: I guess I don't know
18 beyond that. I'm not a web site design expert.

19 BY MR. PLUNKETT:

20 Q. You also mentioned changes to web browsers
21 like Internet Explorer, Netscape. What did you have in
22 mind when you mentioned those factors?

23 MS. ROBERSON: Same objection.

24 THE WITNESS: I know for certain
25 Microsoft has put some effort into making available

1 information to screen users through Internet Explorer that
2 was not always there. So there's more communication
3 available there. There was a point when Internet Explorer
4 actually made it more difficult to browse the Internet.
5 During that period, web access probably actually decreased
6 for persons using screen readers, but it was eventually
7 corrected.

8 So in that case the experience was very dependent
9 on Internet Explorer and not as dependent on the screen
10 readers.

11 BY MR. PLUNKETT:

12 Q. So at some point there -- withdraw.

13 Do you use Internet Explorer?

14 A. Yes.

15 Q. How long have you used Internet Explorer?

16 A. I would say seven or eight years. I don't
17 remember exactly.

18 Q. Do you also use Netscape?

19 A. No.

20 Q. What version of Internet Explorer do you
21 currently use?

22 A. Version 6.

23 Q. How many different versions have you used?

24 A. I would guess perhaps -- I would guess perhaps
25 five different versions. Their version structures work

1 differently than screen readers. They aren't producing as
2 many major versions, and in that I'm not counting every
3 minor security update or security upgrade that may have
4 been made.

5 Q. Do you recall in which version Internet
6 Explorer began to provide more information to screen
7 readers?

8 A. Version 5.

9 Q. Do you remember when that came out?

10 A. I believe about five years ago or six years
11 ago. But I don't remember for certain.

12 Q. Now, in your experience using Internet
13 Explorer, have successive versions of Internet Explorer
14 after Version 5.0 continued to provide additional
15 information to your screen reader?

16 MS. ROBERSON: Objection, vague and
17 ambiguous.

18 THE WITNESS: Yes, to some extent.

19 BY MR. PLUNKETT:

20 Q. Can you describe that?

21 A. I would say the improvements have been more in
22 the areas of stability. Fewer crashes. Version 5 made
23 many changes that are still basically intact in Version 6.
24 And the changes that may have been made since then are
25 relatively small from my experience.

1 Q. Stability of the browser or stability of the
2 screen reader?

3 A. Of both and how they interact.

4 Q. What do you mean when you say that the browser
5 provides more information -- withdraw.

6 What do you mean when you say the browser
7 provides more information to the screen reader?

8 A. Microsoft developed a technology to convey
9 information to screen readers that could be used by
10 Windows applications. The technology was called MSAA,
11 Microsoft Active Accessibility. And Internet Explorer was
12 one of the programs that used that to provide information
13 to screen readers that made the virtual cursor and browse
14 mode more possible.

15 Q. Do you know whether a similar feature is
16 available on Netscape?

17 MS. ROBERSON: Objection, calls for
18 speculation.

19 THE WITNESS: There was not those
20 features available until very recently.

21 BY MR. PLUNKETT:

22 Q. Is that why you used Internet Explorer?

23 A. Yes.

24 Q. Do you know anybody who uses Netscape --
25 withdraw.

1 Do you know anybody who has access to the
2 Internet using a screen reader with Netscape who has had
3 difficulties as a result of not having the ability to use
4 the virtual cursor in the browse mode?

5 MS. ROBERSON: Objection, assumes facts
6 not in evidence, overbroad, vague and ambiguous, calls for
7 speculation.

8 THE WITNESS: No, I don't know anyone.

9 BY MR. PLUNKETT:

10 Q. Did you ever attempt to use Netscape to access
11 the Internet?

12 A. Yes, years ago.

13 Q. Why did you do that at that time?

14 A. At one point it was the most common browser
15 used under Windows, even more common than Internet
16 Explorer.

17 Q. Did you have any difficulties using Netscape
18 to access the Internet at that time?

19 MS. ROBERSON: Objection, vague and
20 ambiguous.

21 THE WITNESS: Yes.

22 BY MR. PLUNKETT:

23 Q. Could you describe that for me?

24 A. It was more difficult to read frames, for
25 example, or pages that were organized in columns of text.

1 I don't mean tables, I mean, say, newspapers or links that
2 would go across that were independent because there
3 weren't functions to split those columns up in any way.
4 And the screen readers at that point weren't able to do
5 that. And it was fairly new Internet technology at that
6 point. You know, we're talking probably more than eight
7 years ago.

8 Q. Is that when you switched to Internet
9 Explorer?

10 A. Yes. Sorry.

11 MS. ROBERSON: Objection as to form.
12 Assumes facts not in evidence.

13 THE WITNESS: Yes.

14 BY MR. PLUNKETT:

15 Q. Have you used any other browsers?

16 A. Yes.

17 Q. Which ones?

18 A. I used a browser under UNIX called Links,
19 which is still around, but this was in the early days.

20 Q. In approximately what years did you use Links?

21 A. 19, probably, 94 through about '98 or so.

22 Q. During that time period were you using any
23 other browsers?

24 A. Netscape some.

25 Q. Did you notice any differences in your ability

1 with computers, computer user groups. I've done some of
2 all three. Presentations.

3 Q. Have you ever been involved in any discussions
4 with other blind users of the Internet regarding the
5 differences in accessibility based on the particular
6 browser that the user is employing?

7 MS. ROBERSON: Objection, compound,
8 overbroad.

9 THE WITNESS: Nothing significant that I
10 remember. Obviously I have some knowledge of Netscape so
11 I have heard things there, but it hasn't been a major
12 topic.

13 BY MR. PLUNKETT:

14 Q. What have you heard about Netscape?

15 A. Previous versions of Netscape did not use the
16 ability that Microsoft had developed to convey additional
17 information to screen readers. There is more recent work
18 done with Firefox, which is sort of related, that is
19 trying to overcome that and compete with Internet Explorer
20 in terms of accessibility.

21 Q. In your experience is there a browser that is
22 considered to be the easiest to use in terms of accessing
23 the Internet with a screen reader?

24 MS. ROBERSON: Objection, vague and
25 ambiguous.

1 THE WITNESS: Yes.

2 BY MR. PLUNKETT:

3 Q. And what browser is that?

4 A. It would be Internet Explorer.

5 Q. Is there a second best in your experience?

6 MS. ROBERSON: Objection, vague and
7 ambiguous.

8 THE WITNESS: I don't -- I don't really
9 know.

10 BY MR. PLUNKETT:

11 Q. Do you know of any browsers that, in your
12 experience, are considered difficult to use with a screen
13 reader?

14 MS. ROBERSON: Objection, vague and
15 ambiguous.

16 MR. PLUNKETT: Counsel, I would just
17 state for the record that I wish you would just state your
18 objections and stop shaking your head at all of my
19 questions because, strangely, every time I ask a question
20 and you object and shake your head, the witness has an
21 answer. And the tone of your objections also seems to be
22 counseling the witness not to answer it. So you can --

23 MS. ROBERSON: Just for the record,
24 Counsel, I have at no time told the witness not to answer.
25 He's been very good to answer the question. I actually

1 someone in your family has completed a purchase on
2 Target.com to your knowledge?

3 A. Yes.

4 Q. Have there been other occasions when you've
5 gone to Target.com with the intention of making a
6 purchase?

7 A. I did on February 8. Of 2006.

8 Q. Any other times you've gone to Target.com with
9 the intention of making a purchase, excluding February 8
10 and last summer?

11 A. No.

12 Q. That leaves about eight times in the last year
13 you've gone to Target not having the intention of making a
14 purchase. What were your reasons for going to the web
15 site on those occasions?

16 A. We're regular Target shoppers. We hire
17 someone to do reading and to do some shopping and we make
18 trips ourselves, and it's easiest sometimes to look at a
19 web site to see what products are available before we go
20 there.

21 So I would have -- I recall looking for
22 specific products more than once in some cases, but my
23 intention was to see what products were available.

24 Q. And then to go to the store and purchase them
25 there?

1 A. Correct.

2 Q. And have you been able to use Target.com for
3 that purpose?

4 A. To some degree, yes.

5 Q. Why do you say to some degree?

6 A. I believe there is a higher number of
7 unlabeled links or links that yield numbers and letters
8 instead of meaningful titles than I run into on most
9 sites.

10 Q. Anything else?

11 A. That's been the main thing in product research
12 that I recall running into.

13 Q. When you were doing product research on
14 Target.com, are you able to locate descriptions of
15 products?

16 A. I'm not certain what you mean by descriptions.
17 For example, I might often just look at a results list and
18 I may not go down to get a specific description. So I
19 don't know for sure. I don't recall a specific problem,
20 but it isn't an area I may have pursued to the lowest
21 level.

22 Q. When you are doing product research on
23 Target.com, is your intention to find prices of particular
24 products?

25 A. More to find what's available.

1 Q. Explain to me how you go about a -- withdraw.
2 Explain to me how you go about using
3 Target.com to find what products are available?

4 A. Well, it's been a few months, I believe, since
5 I've been on there so I don't recall specifically, but I
6 would go to where I could do a search. Put in a phrase
7 and do a search.

8 What I remember most clearly was rechargeable
9 batteries and initiate a search that would bring me back a
10 list of results of what's available.

11 Q. Did you have any difficulties using the search
12 field and activating the search button when you were
13 searching for rechargeable batteries?

14 MS. ROBERSON: Objection, vague.

15 THE WITNESS: I don't recall how the
16 search button or link was labeled. But one gets used to
17 searching and pressing the next button regardless of how
18 it's labeled. So while I don't -- I don't remember
19 difficulties, I couldn't tell you for certain how well the
20 search button was labeled.

21 There are certain assumptions we tend to make in
22 using web sites, and if the button was not labeled, I
23 would probably have pressed it as long as I could find it.
24 And I don't recall the problem of finding the button near
25 the search phrase box, but I do not remember how it was

1 labeled.

2 BY MR. PLUNKETT:

3 Q. Then after conducting the search, did you have
4 any difficulties reviewing the search result list?

5 A. Not other than going down through quite a few
6 of the links that had numbers and letters that I mentioned
7 until I got down to the point where there were product
8 results.

9 Q. So once you got to the point where there were
10 product results, you were able to review the different
11 products available at Target?

12 A. As I recall, yes.

13 Q. Do you recall how long it took you to get to
14 the point on the page where you could review the product
15 results?

16 A. Oh, the first few times it took quite a bit,
17 probably a few minutes. I believe I -- yeah. Again,
18 because of the number of links at the time that were
19 letters and numbers. And not knowing for sure which of
20 those were significant.

21 Q. How do you go about getting past those? Do
22 you tab past them or arrow past them?

23 A. Yes, but the first -- the first time you need
24 to at least -- you don't know if a link is going to be
25 meaningful until you've listened to it. So at least the

1 that I didn't know it was significant.

2 Q. And in what way could those links be
3 significant?

4 A. Well, there could be no results found buried
5 among them somewhere, and to know that that was there
6 could theoretically save me the time of looking for
7 results that were nonexistent.

8 Q. Has that ever happened?

9 A. I don't honestly remember if it has or not.
10 I've usually had results, but that would be one case where
11 it could happen.

12 Q. I've had the court reporter mark as Exhibit 7
13 the declaration of Steve Jacobson in support of plaintiffs
14 motion for a preliminary injunction. On page three of
15 this exhibit, I see your signature, dated April 25, 2006.
16 Do you recall reviewing and signing a declaration in this
17 case?

18 A. Yes.

19 Q. In paragraph 17 of the declaration, it states,
20 in my experience, the Target web site contains a number of
21 links and images that do not have labels that can clearly
22 identify what they do, making access to the site nearly
23 impossible.

24 Can you explain what you meant by how these
25 links and images that do not have labels made access to

1 the site nearly impossible?

2 A. It makes the learning curve longer, it means
3 that there could be features or paths I might take that I
4 don't even know exist. It means that any time I go to the
5 Target site where that -- when that problem exists, I'm
6 going to at least need to periodically revisit it and see
7 if it changes. Perhaps by hearsay I'll find out that the
8 fifth link of a group has something useful, but that would
9 just be happenstance if someone happened to figure it out.

10 It adds a whole level of unnecessary
11 complexity. Links aren't that hard to label.

12 Q. You said that on February 8, 2006, you went to
13 Target.com not simply to do product research, but to
14 actually make a purchase; is that right?

15 A. Yes.

16 Q. What were you attempting to purchase on
17 February 8?

18 A. I believe it was rechargeable batteries. I'm
19 not 100 percent sure of that anymore.

20 Q. Okay. Did you access Target on that occasion
21 by going to the home page at Target.com?

22 A. Yes.

23 Q. What did you do from the home page?

24 A. I did a -- from what I remember, I did a
25 search. I don't recall if I had to go to a separate page

1 to do a search or not. But I did a search for
2 rechargeable batteries, which I have gone in and done a
3 number of times and gotten results.

4 And added some nickel NIMH batteries to my
5 cart with a charger, as I recall. I don't -- I guess I
6 don't remember absolutely for certain anymore what
7 happened there, but I had at least one set of batteries
8 and a charger in my cart.

9 And then went to the proceed to checkout page.
10 I think I filled in a name and address there, but that's
11 where I got stuck.

12 Q. Let me back up just a little bit. You said
13 you ran the search and you got product results and then
14 you added items to your cart. Did you have any
15 difficulties adding the items to your cart?

16 MS. ROBERSON: Objection, vague.

17 THE WITNESS: I had the difficulties
18 we've outlined before with navigating through links that
19 didn't have meaningful labels. I do not remember if the
20 add to cart button was clearly labeled or not so I don't
21 remember if that was a problem.

22 Again, I'm used to trying to navigate through
23 some situations that are a little difficult, and when you
24 have a product, there's usually only so many links or
25 buttons, and sometimes one can deduce, even if it's poorly

1 labeled, what it is. And I don't remember what I did in
2 that regard. That wasn't where my major frustration was.

3 BY MR. PLUNKETT:

4 Q. After you added the items to the cart, you
5 said that you went to the proceed to checkout page?

6 A. Right.

7 Q. How did you access the proceed to checkout
8 page?

9 A. I believe there was a button that said proceed
10 to checkout.

11 Q. And you activated that button and went to the
12 next page?

13 A. And that button brought up a page, yes.

14 Q. What do you recall about what was on the page
15 that the proceed to checkout button brought up?

16 A. I believe that's where I supplied my shipping
17 address.

18 Q. By chance, did it bring you to a page asking
19 you to sign it? Or to create a new account, if you
20 recall?

21 A. I don't believe it did. And I believe that
22 was because of the August purchase. But I will admit I
23 don't -- I'm sorry.

24 Q. I'm sorry to interrupt you. Did you need to
25 finish your answer?

1 A. I don't remember for certain. There could
2 have been a create an account and I may have had to enter
3 an existing account. I'm not clear on what happened
4 there.

5 Q. But you wound up on a page where it asked for
6 shipping information?

7 A. Yes.

8 Q. Is that the page where you experienced
9 difficulties?

10 A. Yes, as I recall.

11 Q. What happened on that page?

12 A. The problem I ran into was not being able to
13 figure out a way to continue the process from that point.
14 It occurred to me there was still either a proceed to
15 checkout button or link on that page, so I thought perhaps
16 that needed to be used again. But it just caused that
17 current page to refresh, and I could find no way of
18 getting around it.

19 I finally asked someone else with vision in
20 the family to look at that page to see if they could tell
21 what I should do next. And as I recall, there was a
22 second button that was labeled continue checkout or
23 something along those lines that needed to be clicked.

24 Since February 8, you know, I was aware at
25 that point, since there had been a press release and so

1 forth, that there was activity with Target having to do
2 with this case, I was very -- wanted to make very sure I
3 understood what was going on. And the person who assisted
4 me found that button, showed me physically by moving the
5 mouse there where that button was, but there was no
6 indication whatsoever by my screen reader that there was a
7 button there. It wasn't just unlabeled, but the button
8 itself wasn't present. A screen reader will tell you if
9 an unlabeled button is present. And I believe at that
10 point I also switched to JFW, that was where I did my
11 comparison to see if the button was found there.

12 Q. Was it?

13 A. No, it was not with either one.

14 Q. How long did you spend on that page with JAWS?

15 MS. ROBERSON: Objection, asked and
16 answered.

17 BY MR. PLUNKETT:

18 Q. I'm talking about this particular page, not
19 the entire site.

20 A. I would guess perhaps ten minutes.

21 Q. And what did you do with JAWS on that page?

22 A. Examined the page very carefully with the
23 virtual cursor, tabbed through it in which there were
24 cases in which the tab order included information that I
25 may have missed with the virtual cursor. And I did the

1 STATE OF MINNESOTA)
) SS.
2 COUNTY OF WRIGHT)
3

4 Be it known that I took the deposition of STEVEN
JACOBSON, on the 31st day of May, 2006, at 710 Marquette
5 Avenue, Bear River Conference Room, Minneapolis,
Minnesota;

6 That I was then and there a Notary Public in and
for the County of Wright, State of Minnesota, and that I
7 was duly authorized to administer an oath;

8 That the witness before testifying was first duly
sworn to testify the truth and nothing but the truth;
9

10 That the testimony was recorded by myself and
transcribed into a computer-aided transcript and that the
deposition is a true record of the testimony given by the
11 witness to the best of my ability;

12 That the cost of the original transcript has been
charged to the party noticing the deposition, unless
13 otherwise agreed upon by Counsel; and that copies have
been made available to all parties at the same cost,
14 unless otherwise agreed upon by Counsel;

15 That I am not related to any of the parties
hereto nor interested in the outcome of the action;
16

17 That the reading and signing of the deposition by
the witness was not waived, and that the original
transcript will be retained by Stuart Plunkett;
18

19 WITNESS MY HAND AND SEAL THIS 31st day of May,
2006.
20
21

22 _____
GAIL M. HINRICHS
Registered Professional Reporter
23
24
25