

# EXHIBIT I

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

 ORIGINAL

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5	NATIONAL FEDERATION OF THE	)	Case No.
6	BLIND, et al.,	)	C 06-01802 MHP
7	Plaintiffs,	)	
8	v.	)	
9	TARGET CORPORATION,	)	
10	Defendant.	)	

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DEPOSITION OF DR. JAMES THATCHER  
FRIDAY, JUNE 2, 2006

BY: CHRISTINE L. JORDAN, CSR NO. 12262

1 worked on developing, those guidelines in IBM.

2 Q. Did that include development of guidelines  
3 for Internet pages?

4 A. Yes.

5 Q. How did you develop guidelines for  
6 development of accessible Internet pages?

7 A. Because I knew how screen readers worked and  
8 I knew what -- what the requirements were for screen  
9 readers, both at software and at Internet. It was a  
10 matter of -- first of all, there -- I'm sorry. I'm  
11 sorry.

12 There were a number of existing attempts at  
13 guidelines and standards and in various countries and  
14 various parts of this country. And taking those  
15 together with my knowledge of screen readers, we, I  
16 think, simplified and -- and clarified guidelines for  
17 both software and web and hardware.

18 Those guidelines have been public since about  
19 1997. And I think they probably have been changed  
20 every six months. They have evolved with changing  
21 technology and with changing standards in the  
22 community.

23 MR. PLUNKETT: Can you read the last couple  
24 of words back.

25 (Record read as follows:

1 Q. And who determines the standard for  
2 accessibility in your consulting practice?

3 A. Sometimes the client comes in with a specific  
4 set of -- of provisions or checkpoints that they want  
5 to be judged against. And that is the case with  
6 Priceline through the Attorney General of New York  
7 where there are a list of some 20 items that are  
8 brought or extracted, both from the Web Content  
9 Accessibility Guidelines and from Section 508 Standards  
10 on the web.

11 When I consult with a client, like Clayton  
12 College, which is a small college in the Midwest, I  
13 kind of take a combination of what I see as important  
14 in -- in the Priority 1 and 2 Guidelines from -- from  
15 the Web Content Accessibility Guidelines and Section  
16 508. And I look at that website from that perspective.

17 Q. That's what you do in cases where the client  
18 doesn't come in with a set of criteria for you to use  
19 as the standard?

20 A. That's correct.

21 Q. Okay. How do you determine which standards  
22 from the WCAG are important?

23 A. To begin with, they are -- they're listed in  
24 three groups. The -- with a priority level on each.

25 Priority 1 is supposedly those things that

1 are essential. These must be done in order for the  
2 site to be used by people with disabilities. Priority  
3 2, these ought to be done. There will be some people  
4 who will find it very difficult to use the website if  
5 you don't do these. And the third group is this would  
6 be helpful if you did these. So those are the  
7 priorities that were assigned by the Web Content  
8 Accessibility Guidelines Working Group.

9           However, they don't -- one thing, those  
10 were -- they came out in 1999. So technology has  
11 changed. A second thing is there are some Priority  
12 1 -- there's at least one Priority 1 guideline that is  
13 in -- impossible for me to evaluate, "Use clear and  
14 concise language." I don't know how to say whether a  
15 website uses clear and concise language so I don't  
16 include that in my evaluation.

17           Q. So you attempt to follow the three  
18 priorities, but there's some exceptions to that?

19           A. That's correct.

20           Q. And one of the -- one of the items you need  
21 to be sensitive to is the fact that the WCAG came out  
22 in 1999, and technology has changed since then. In  
23 what ways does that require you to deviate from the  
24 WCAG standards?

25           A. I'll give you an example. A Priority 2

1 requirement on forms is to have default text in input  
2 fields. So, you know, if input fields where you're  
3 supposed to type in your first name, you might have the  
4 text "name" there. And there actually is a Priority 2  
5 checkpoint that says you should do that.

6 And the reason that was done is because the  
7 second generation of screen readers didn't know there  
8 was a form element there. And so by putting text in  
9 there, that second generation could find the form  
10 element. But that's just not an issue anymore. So you  
11 don't -- you don't worry about that checkpoint anymore.

12 Q. Can you think of any other examples where  
13 changes in technology require a deviation from the WCAG  
14 standards?

15 A. A very important one, which is not the same,  
16 it's a combination of the fact that there was something  
17 better in 508 dealing with navigation on pages. And --  
18 and the Web Content Accessibility Guidelines didn't get  
19 it right. And so there are -- there are a good --  
20 there are good techniques for making pages -- making  
21 navigation of pages better and ...

22 Q. Any other examples?

23 A. Not that I can think of right now.

24 Q. You said there's at least one WCAG standard  
25 in Priority 1 that you don't use because you don't

1 understand it. I believe you mentioned that it was the  
2 directive to use clear and concise language; is that  
3 right?

4 A. That is -- the way you said it right then  
5 isn't quite right. I said I don't know how to test it.  
6 It isn't that I don't understand the idea of using  
7 clear and concise language; although, it may seem that  
8 way. I -- I don't know how to test for clear and  
9 concise language.

10 Q. Because it's subjective?

11 A. Yes.

12 Q. Are there other WCAG standards -- withdraw.

13 Are there other WCAG standards that you don't  
14 know how to test because they -- their compliance with  
15 them is subjective?

16 A. The way you phrase that, I don't want to  
17 answer it that way. Could you rephrase it?

18 Q. Let me try.

19 Are there other WCAG standards that require a  
20 subjective element in terms of the web page designer's  
21 activity?

22 A. That's a very good question, and the answer  
23 is almost all of them. The -- the -- there's a -- the  
24 most important requirement on -- no, I can't say that.  
25 Retract.

1           One of the most important elements, the first  
2 in every guideline of web accessibility, is to include  
3 text equivalence. It's a subjective thing as to  
4 whether or not it's a good text equivalent. People  
5 argue about that.

6           Q.    So one could use a text equivalent, and that  
7 would comply with the WCAG guideline, but it may not  
8 make the site accessible if the text element they  
9 choose is not a good one?

10          A.    That's right.

11           MR. PARADIS: Do you want some more coffee?

12           THE WITNESS: Yes.

13 BY MR. PLUNKETT:

14           Q.    I believe you said that when a client comes  
15 to you for consulting on website accessibility, you use  
16 a combination of standards. Did that combination  
17 include standards outside of the WCAG standards?

18          A.    Yes, it did.

19           Q.    What other standards would you incorporate?

20          A.    The Section 508 Standards for web  
21 accessibility.

22           Q.    Any other sources of standards that you  
23 incorporate in your consulting work?

24          A.    No, there are no other sources.

25           Q.    And are there -- do you -- withdraw.

1 Do you incorporate all of the Section 508  
2 Standards?

3 A. I think the answer to that -- the answer to  
4 that question is yes, I incorporate all of the Section  
5 508 Standards.

6 Q. What year did the Section 508 Standards come  
7 out?

8 A. The -- the advisory committee which was  
9 formed by the Access Board was in 1999, I believe.  
10 Then the access -- of which I was the vice chair,  
11 probably largely because of my work with the IBM  
12 guidelines that preceded that.

13 And then we completed that work in 1999. I  
14 think it was the Access Board brought out its version  
15 about a year later in 2000, and then they became  
16 official in 2001, in June of 2001.

17 Q. And obviously technology has changed since  
18 2001, right?

19 A. Yes.

20 Q. Has that made any of the Section 508  
21 Standards obsolete or difficult to apply in your  
22 consulting business?

23 A. I think that you're giving too much -- the  
24 change in technology is evolutionary, not  
25 revolutionary. So things move. And so the changes in

1 the guidelines are -- kind of also move cautiously and  
2 slowly. It's -- with the technology, it's possible  
3 to -- we can interpret the Section 508 Standards in the  
4 light of the new technology and reach reasonable  
5 conclusions. So -- reasonable conclusions so we don't  
6 have to throw them out.

7 They are actually -- it's not just a new  
8 technology; it's also our understanding, our  
9 experience. So in five years or six years, we have a  
10 lot more experience in this area. And so we can do a  
11 better job of writing down the standards and  
12 guidelines.

13 So Section 508 itself has been -- it's been  
14 announced that they're going to redraw the Section 508  
15 Standards. A new advisory committee is being formed  
16 right now to do that.

17 Q. So you -- withdraw.

18 Are you able to identify any Section 508  
19 Standards that you have difficulty applying in your  
20 consultancy practice?

21 A. No.

22 Q. Do you know why the Section 508 Standards are  
23 going to be redrawn?

24 A. Because we've learned more because the  
25 technology has changed.

1 Q. What is the purpose of considering a  
2 clarification to the alt-text rule?

3 A. What is the purpose of clarifying the rule,  
4 to make it clearer.

5 Q. Is it because it's difficult to apply as it  
6 is today?

7 A. I don't think it's difficult to apply. I  
8 think the problem is that we want -- we want web  
9 developers to use accessibility standards and  
10 guidelines to guide their work in developing accessible  
11 products because they're not going to understand how  
12 people with disabilities use their products.

13 Probably many web developers have never seen  
14 a blind person use a screen reader on their website.  
15 So we use those guidelines and standards to help them  
16 do that job. And the clearer those standards and  
17 guidelines are to that end, the better job is going to  
18 be done.

19 Q. Do you know whether the WCAG standards that  
20 were drafted in 1999 are undergoing any revisions?

21 A. Yes, I do.

22 Q. Is there a version --

23 A. They are.

24 Q. -- Version 2.0 of them?

25 A. There's a Version 2.0 of the Web Content

1 Accessibility Guidelines.

2 Q. Are you familiar with Version 2.0?

3 A. I am familiar with Version 2.0.

4 Q. Did you have any involvement in drafting  
5 Version 2.0?

6 A. Again, my involvement is indirect. There's  
7 a -- there's a Web Content Accessibility Guidelines  
8 Working Group which has a mailing list which I have  
9 watched since its inception. And I sometimes -- I'm  
10 not a member of the Working Group, but I sometimes  
11 comment on that list on things that are going on.

12 Q. Do you have an opinion regarding whether  
13 Version 2.0 is an improvement over Version 1.0?

14 A. I do have an opinion, and it's definitely an  
15 improvement for the reasons I just indicated. In fact,  
16 the example I gave was from 2.0. The example of text  
17 equivalence I gave a moment ago was from 2.0. It is --  
18 when I was phrasing that, it's the kind of thing that  
19 will happen with Section 508 revisions, clarification.

20 Q. Do you know the purpose of the revisions to  
21 the WCAG?

22 A. Yeah, they're threefold.

23 The first one is to have guidelines that are  
24 technology independent. The hope is to have -- the  
25 fact that Version 1 of the guidelines is very HTML

1 specific, and they want to have guidelines that are  
2 more general. The second is to make certain that each  
3 of the, let me call them, checkpoints be testable which  
4 would throw out the example I used earlier in this  
5 deposition about clear and lucid language or whatever  
6 the correct phrasing is of that.

7 Let's see, testable. I've forgotten what the  
8 third is.

9 Q. Do you know the timeline for the WCAG Version  
10 2.0 to be finalized?

11 A. Yes. The timeline for the WCAG 2.0 -- that's  
12 how WCAG is, W-C-A-G -- 2.0 has gone into what's called  
13 last call, which is the last chance to provide comments  
14 on the draft of the guidelines. After that, the Web  
15 Content Accessibility Guidelines Working Group will  
16 seek and test websites that meet the various levels of  
17 Web Content Accessibility Guidelines for two months,  
18 approximately.

19 And if all of that is successful, then  
20 sometime in September or October they will be -- maybe  
21 the end of the year they'll be finalized. It's a  
22 process that has been going on for four years.

23 Q. We talked earlier about the combination of  
24 guidelines and standards that you use to provide a  
25 consultancy service to someone regarding website

1 accessibility. Do you know if there's a consensus in  
2 the web design community regarding what the proper  
3 combination is of standards and guidelines for judging  
4 a website's accessibility?

5 A. The Web Content Accessibility Guidelines  
6 Working Group is a consensus-based organization. So  
7 the answer to that question is with Web Content  
8 Accessibility Guidelines, both Version 1 and 2, those  
9 are consensus documents.

10 Q. But you use a combination of those guidelines  
11 and Section 508, right?

12 A. That's true.

13 Q. Is there a consensus -- withdraw.

14 Is it your opinion that there is a consensus  
15 about the proper combination of guidelines to use in  
16 determining whether a website is accessible?

17 MR. PARADIS: Are we talking about now, is  
18 there a consensus now? Is that your question?

19 MR. PLUNKETT: Yes.

20 THE WITNESS: Web Content Accessibility  
21 Guidelines Version 2 is that consensus. And I believe  
22 that those -- those guidelines very accurately reflect  
23 that combination that I use on a daily basis.

24 My combination is intuitive, but the effort  
25 that's been going on for five years has been -- four or

1 five years has really been to kind of nail that down.

2 BY MR. PLUNKETT:

3 Q. Have you served as an expert in other  
4 litigation matters?

5 A. I don't know if that's the role that I play  
6 with the Priceline situation, certainly not in this  
7 sense of the meeting today. Actually, the phrase  
8 that -- I guess I'm the auditor, is the role in  
9 Priceline.

10 Q. What do you do as the auditor?

11 A. They -- the -- Priceline agreed to first of  
12 all bring their site into compliance with a set of --  
13 of checkpoints. And they were given a certain length  
14 of time to do that. And it was my role to come in and  
15 see that they did do it and then to check that every  
16 year for -- I think it's four years. I think I'm in  
17 the third year of that beginning this summer.

18 Q. And in the Priceline matter, you were given a  
19 specific set of guidelines to judge their progress?

20 A. Yes. Yes, it -- yes. If you look at -- both  
21 Priceline and Ramada have a specific set of checkpoints  
22 that -- that are a combination, again, of Web Content  
23 Accessibility Guidelines and Section 508. And they're  
24 a little bit different. They negotiated with the  
25 attorney general on which of those checkpoints to

1 navigation and activation.

2 Q. You stated a moment ago that you concluded  
3 that before that button could be activated by a  
4 keyboard and it could only be activated by a mouse that  
5 it was impossible to activate using a screen reader.  
6 Is that correct, that if an element can only be  
7 activated with a mouse it's impossible to activate it  
8 with a screen reader?

9 A. In your question just now, you made a  
10 statement about what I had said and then asked a  
11 question. Could you separate the two and let me deal  
12 with one then the other?

13 Q. Yes.

14 Is it correct that it is impossible to  
15 activate an element on a screen with a screen reader if  
16 that element requires a mouse click?

17 A. No, that's not true.

18 Q. I know --

19 A. It may be possible to activate an element  
20 that requires a mouse click because JAWS can simulate a  
21 mouse click. All screen readers can -- can in effect  
22 perform mouse clicks on the current point of focus.

23 Q. Will the ability of a screen reader to  
24 perform a mouse click depend on the particular version  
25 of the screen reader that the user is using?

1 mandatory and guidelines are just that. I'm wondering  
2 if that's true in your business.

3 A. I think I've just answered that question in  
4 saying it's an organizational -- it's an organizational  
5 distinction. The -- the federal government uses the  
6 word standards, and the W3C uses the word guidelines.  
7 And the content -- the importance of the content,  
8 relevance of the content is -- is -- those words don't  
9 make any difference.

10 Q. We've talked about the WCAG standards,  
11 Version 1.0 and Version 2.0, and we've also talked  
12 about the Section 508 Standards and the IBM standards.  
13 Are there other sources of standards for website  
14 accessibility that you're aware of?

15 A. First of all, you used the word standards and  
16 guidelines -- words standards and guidelines in that  
17 question. And let's assume they all mean the same  
18 thing. They're sets of checkpoints about how to do  
19 accessibility.

20 And organizations tend to want to have their  
21 own stamp on -- on the checkpoints, and I think that's  
22 what IBM did. They wanted to have their versions which  
23 tend to include implementations, for example.  
24 They're -- they're minor variations. There are other  
25 organizations like the JIS, which is the Japanese

1 Industry Standards, are -- are writing web  
2 accessibility standards which are basically variations  
3 of Web Content Accessibility Guidelines. I think that  
4 the European community has generally adopted the Web  
5 Content Accessibility Guidelines, generally.

6 Q. Do you know whether Microsoft has standards?

7 A. I don't think that Microsoft has a list of  
8 web accessibility guidelines, again, answering the  
9 question about guidelines and not about standards. I  
10 think they all -- they do have a set of software  
11 guidelines because -- because they basically want to  
12 communicate how software developers should work against  
13 their -- their software tools, namely, accessibility  
14 which is an important part of software accessibility.

15 Q. Because of your earlier answer, I will use  
16 the words standards and guidelines interchangeably. If  
17 at any point that becomes a problem, please let me  
18 know. Is that okay?

19 A. That's okay.

20 Q. Do you know if states have guidelines for  
21 website accessibility?

22 A. Yes, states have guidelines for web  
23 accessibility. For example, the state of Texas  
24 recently passed a law that -- House Bill 2819 -- which  
25 requires that -- that the Department of Information

1 Resources of the state use the Section 508 Standards as  
2 their model for accessibility of information  
3 technology.

4 I don't know about the details of any other  
5 states. I know California has a law on accessible --  
6 accessibility, electronic and information  
7 accessibility. But I don't know the details of it at  
8 all.

9 Q. Do you know if there are states who have  
10 adopted web accessibility guidelines that differ from  
11 Section 508?

12 A. I don't know the answer to that question.  
13 If -- if they -- if they do adopt -- if -- if they  
14 don't adopt exactly 508 or exactly Web Content  
15 Accessibility Guidelines, they may reword them a little  
16 bit. But they'll be essentially the same.

17 Q. Have you -- do you know that?

18 A. No.

19 Q. Is it your opinion that there is a consensus  
20 regarding the standards for website accessibility?

21 A. I think you already asked that question, but  
22 I'll answer it again.

23 Yes, I think there is a consensus, and I  
24 think the W3C's Web Content Accessibility Guidelines  
25 Version 2 is a manifestation of that consensus.

1 Q. Are there any other manifestations of that  
2 consensus?

3 A. Well, I think another manifestation of that  
4 consensus is the work that I do and people like me do  
5 in -- in evaluating and -- and suggesting  
6 accessibility. We've been doing it long enough that --  
7 that we understand the way things should be done. And  
8 so the written version, as I said, we've gone five  
9 years on Version 1 of the guidelines, and now we're  
10 going to have a new one that will help us clarify that,  
11 that work.

12 Q. Is Version 2.0 currently being used by those  
13 who evaluate website accessibility?

14 A. I think a fair answer is no because it --  
15 it's not official yet. But implicitly yes because the  
16 example that I used, which I think is a good one,  
17 rather than just say provide a text equivalent, we  
18 separate out the kinds of text equivalent because we  
19 know for an active image we want the equivalent to be  
20 what the function of the image is for information,  
21 varying the images. We want the -- the alt-text or  
22 text equivalent to convey that information.

23 We do that. We understand that web  
24 developers understand that. That's now being put into  
25 the standard rather than just -- or guideline rather

1 than just say, "Provide text equivalent." So it's an  
2 elaboration and clarification which I think is  
3 understood.

4 Q. When you say "we do that," who are you  
5 referring too?

6 A. I'm referring to people who do web  
7 development, people who do web accessibility, people  
8 who teach web accessibility.

9 Q. How many total people are you talking about?

10 A. Um, I have really no idea what that number  
11 is. Um, if you take as an example an organization I  
12 work with in Austin called Knowbility, which is spelled  
13 with a K, K-N-O-W-B-I-L-I-T-Y, dot-com, they produce in  
14 various cities but in Austin every year an event called  
15 Accessibility Internet Rally where we train web  
16 developers, usually about 100 of them, in web  
17 accessibility.

18 And we solicit non-profits who need websites  
19 and train them on how to describe what they need in the  
20 website. And then we team up the non-profits with the  
21 web development groups who have been trained in  
22 accessibility. Then in a one-day rally, they build  
23 accessible websites for their non-profits and are  
24 judged -- those websites are judged by a set of judges  
25 in Austin, including myself, and there are probably 25

1 of us in Austin that serve as judges. And then we  
2 celebrate the victors of that great event.

3 But the reason I say that is every year we're  
4 training in Austin -- in Austin we're training in  
5 developers and web accessibility. We have trainings  
6 all over the country like that in web accessibility  
7 just from this organization called Knowbility.

8 So I think the number is in the thousands or  
9 tens of thousands.

10 Q. You testified earlier that in evaluating a  
11 website's accessibility you use a combination of  
12 guidelines and standards. Do you know whether all of  
13 these people you're talking about use the same  
14 combination?

15 A. Yes, I'm sure they do.

16 Q. How do you know that?

17 A. I'm sorry.. I was being sarcastic.

18 I don't know. I don't know that they use the  
19 same combination. I want to -- the -- the concept of  
20 accessibility is something that -- that is so easily  
21 defined as really kind of a mistake.

22 Let me give a comparison. We can have -- you  
23 can talk about having correct code, valid code on your  
24 website. And the question of whether or not you have  
25 valid code on your website is something that is

1 absolutely determinable. Whether it's important or not  
2 is a separate issue.

3 We can go to the W3C and check Target.com for  
4 valid HTML code, and the answer would be yes or no.  
5 But accessibility, which has guidelines or standards,  
6 is more like usability. You don't have a set of  
7 absolute rules on how to make a website usable. And  
8 I'm sure that anybody at Target.com will talk about the  
9 things they do to make their website usable, and they  
10 probably have arguments about that. Accessibility is  
11 more similar to that. The exact way to do it is -- is  
12 subject to debate.

13 The overall requirements are not subject to  
14 detail. They're very, very direct and very simple.  
15 And the ones I've talked about in my report and in my  
16 declaration are only four subjects -- navigation,  
17 alt-text, form labeling, and the infamous button. And  
18 those -- those are -- everybody agrees on that.  
19 There's no debate about those four subjects.

20 MR. PLUNKETT: Can we take a short break?

21 (Recess taken.)

22 MR. PARADIS: Dr. Thatcher would like to  
23 clarify two items.

24 THE WITNESS: The first one is I may have  
25 implied or that I thought that some one of the -- one

1 of the witnesses had actually been able to complete a  
2 purchase, because in fact one of the reasons I may have  
3 said that is I have a note somewhere about "complete a  
4 purchase."

5 But the thing is that it wasn't the purchase  
6 where -- the purchase was completed on Amazon.com; it  
7 was not on Target.com. And so I don't know if anyone  
8 has ever been able to complete a purchase, a blind  
9 user.

10 The second clarification deals with the test  
11 that we did yesterday. And given all the discussion  
12 of -- of the button, what Mr. Paradis and Mr. Busrawi  
13 wanted to find out is if it's possible for us to  
14 activate that infamous button. And in fact we found a  
15 way to do that.

16 BY MR. PLUNKETT:

17 Q. And that way is the way you have already --

18 A. Yes.

19 Q. -- described?

20 A. That's correct.

21 (Defense Exhibit No. 11 was marked for  
22 identification.)

23 BY MR. PLUNKETT:

24 Q. I've had the court reporter mark as  
25 Exhibit 11 a document from JimThatcher.com called "Side

1 by Side WCAG vs. Section 508."

2 Do you recognize this document?

3 A. Yes, I do.

4 Q. Tell me what it is generally.

5 A. Generally, it is a side-by-side comparison of  
6 the Priority 1 Web Content Accessibility Guidelines  
7 with the Section 508 Web Accessibility Standards.

8 Q. Did you create this document?

9 A. I did.

10 Q. Is that your web address at the bottom of the  
11 page?

12 A. It is.

13 Q. If you turn to Page 4, a table begins on  
14 Page 4 that appears to compare the WCAG guidelines with  
15 the Section 508 Standards. Is that a correct  
16 description --

17 A. That's correct.

18 Q. -- of the table?

19 A. That's correct. It lists each of the 16 -- I  
20 think it's 16 Web Content Accessibility Guidelines'  
21 checkpoints and then talks about how they relate to  
22 Section 508.

23 Q. In the column marked "Comparison," there are  
24 some places, for example, on Page 6 where the  
25 Comparison states "the same."

1 A. Yes.

2 Q. What does that indicate?

3 A. It means that in my interpretive -- my  
4 impression of the two is that they're having the same  
5 effect, the same requirement.

6 Q. And on the same page you'll see Comparison  
7 that reads "not in 508."

8 A. Yes.

9 Q. What does that indicate?

10 A. That the requirement, in this case for  
11 auditory descriptions, checkpoint 1.3, it's -- there's  
12 no corresponding item, in my opinion, that's in Section  
13 508.

14 Q. And in some of these Comparison boxes, there  
15 is an indication that says "similar."

16 A. Yes.

17 Q. What does similar mean?

18 A. Well, if you -- the Section 508 Standards  
19 were actually drawn from the draft of the Web Content  
20 Accessibility Guidelines, but they were converted into  
21 what I understand is more regulatory language. So lots  
22 of the explanatory information is excluded and -- and  
23 "shall" has replaced -- "such and such shall be done"  
24 replaces an instruction, "provide text equivalent."  
25 Instead, it's worded that "text equivalent shall be

1 provided." That's regulatory language, I guess.

2 Q. And where the Comparison box indicates that  
3 WCAG is "more restrictive," what does that mean?

4 A. Can you refer --

5 Q. Page 8.

6 A. The reason this isn't just a simple table but  
7 after each item there's a discussion is to try to  
8 elaborate those similar and the same -- I don't  
9 elaborate the same but similar and more restrictive. I  
10 try to elaborate in the discussion below.

11 Q. Start --

12 A. So -- okay.

13 Q. Starting on Page 11, a table begins that  
14 compares Section 508 to WCAG. And immediately  
15 preceding that table there's a statement that "if a  
16 website is WCAG A-Compliant and its author wants to be  
17 Section 508 compliant as well, there are five standards  
18 he must address additionally."

19 Is that an indication that there are five  
20 Section 508 Standards that are not included in WCAG?

21 A. No, that isn't the implication.

22 Q. Can you explain that?

23 A. Yes, I can.

24 The A-Compliance is compliance with only the  
25 Priority 1 Web Content Accessibility Guidelines

1 provision -- checkpoints. There are also, as I  
2 mentioned earlier, Priority 2 and Priority 3.

3 This comparison is a comparison of just the  
4 Priority 1 of Web Content Accessibility Guidelines and  
5 508. But when I start talking about 508, I have to --  
6 and answer the question "how does Web Content  
7 Accessibility Guidelines compare," I have to go into  
8 other priority levels to bring out that comparison.

9 Q. What was the purpose in making this chart?

10 A. It's a question that many people ask:  
11 What's -- what's the -- what's different about Section  
12 508 from Web Content Accessibility Guidelines,  
13 especially with the Priority 1 Web Content  
14 Accessibility Guidelines compared with Section 508?  
15 It's a common question.

16 Q. Why is that a common question?

17 A. Because those are the two mainstays of --  
18 have been the two mainstays of accessibility  
19 requirements for the past five years. I'm not sure  
20 when I wrote this, but it was quite a while ago. I  
21 actually did this as a -- at the request of the ATAP,  
22 which is the Association for Tech Act Projects. And  
23 they sponsored this. They asked me to do it.

24 Q. And it's a common question because the WCAG  
25 and Section 508 are different in some respects, right?

1 A. There's -- yes. They're different in  
2 wording. They're different in organization. They're  
3 different in intention. One is intended to be a part  
4 of the law, and the other is intended to be a statement  
5 about what is accessibility.

6 Q. But there are also some guidelines in one  
7 that are not in the other?

8 A. There are also some substantive differences,  
9 yes. I think the best example of that is the case for  
10 in-page navigation which I don't think is represented  
11 very well in Section -- with Web Content Accessibility  
12 Guidelines. And I think it's a crucial issue. It's a  
13 crucial issue on Target, and it is represented in  
14 Section 508.

15 (Defense Exhibit No. 12 was marked for  
16 identification.)

17 BY MR. PLUNKETT:

18 Q. I asked the court reporter to mark as  
19 Exhibit 12 another group of pages from your website  
20 titled "Side by Side 508 and WCAG 2.0."

21 Do you recognize this document?

22 A. Yes, I recognize that document.

23 Q. Did you create this document?

24 A. Yes, I created that document.

25 Q. Is that your web address at the bottom of the

1 nothing. And it's long.

2 So as I mentioned earlier in my testimony, on  
3 the home page, 89 percent of the characters in that  
4 page are these symbols that are -- that the screen  
5 reader is giving as the only information it can find  
6 about the link. So they -- the fact that they don't  
7 have text equivalence is really disastrous. If there  
8 were several pictures that just were -- were decorative  
9 and they didn't have alt-text, the screen reader isn't  
10 going to replace -- isn't going to mention them. It's  
11 going to ignore them. So that would be much less of a  
12 problem than these are.

13 BY MR. PLUNKETT:

14 Q. If on Target.com a user is able to access the  
15 various shopping departments through links on the home  
16 page, why is it disastrous that other elements of the  
17 home page may not have alt-text?

18 A. Because as I just indicated, that -- that --  
19 the effect of those images not having alt-text is --  
20 is, as you can read in the depositions of several of  
21 the -- of the class members, it's frustrating and  
22 confusing and annoying. There are other examples of  
23 inaccessible content on Target.com which don't even  
24 appear.

25 I don't think they appear either in my report

1 or declaration, namely, the JavaScript menus that drop  
2 down from each of the main links. Those are totally  
3 inaccessible to a person using the keyboard or screen  
4 reader. And I didn't raise those as issues because if  
5 you go to them -- the page for toys, you will find  
6 links to those various departments that appear in the  
7 drop-down menu.

8 So the redundancy there is fine, and I'm not  
9 going to complain about the lack of keyboard access to  
10 those. But the alt-text on those images has a negative  
11 effect on the experience of anyone trying to use the  
12 site as is indicated by several of the depositions.

13 Q. And the negative effect is it's frustrating,  
14 confusing and annoying for the user?

15 A. That's correct, yes. And we don't know --  
16 they don't know if what they're missing is important  
17 for their navigation. They don't know if they can get  
18 to those things.

19 And, by the way, they probably can't because  
20 specials will be included in a highlighted imagemap,  
21 and they're not going to know about those specials.

22 Q. Is a website that's frustrating, confusing  
23 and annoying inaccessible in your view?

24 A. I can't -- I don't know how to answer in that  
25 generality. It's probably confusing, annoying and

1 THE WITNESS: I applied a combination of  
2 Section 508 and the Web Content Accessibility  
3 Guidelines to look at the con- -- the code of  
4 Target.com to find whether there were -- whether  
5 alt-text had -- whether images had text equivalence,  
6 whether forms were labeled, whether navigation was  
7 possible, in-page navigation was possible, and whether  
8 you could use the site with a keyboard.

9 BY MR. PLUNKETT:

10 Q. Is it correct, then, that you looked for  
11 violations of the four guidelines we just talked about  
12 to determine if Target.com was accessible or not?

13 A. That's true.

14 Q. Can a website violate one of those four  
15 guidelines yet still be accessible?

16 MR. PARADIS: Objection; incomplete  
17 hypothetical.

18 THE WITNESS: Yes, a website can violate one  
19 of those four and be accessible.

20 BY MR. PLUNKETT:

21 Q. If a website does violate one of those  
22 standards, what guidelines do you apply to determine  
23 whether the website is nonetheless accessible?

24 MR. PARADIS: Objection; incomplete  
25 hypothetical.

1 THE WITNESS: I don't have a standard to  
2 apply to a website that doesn't -- what I judge  
3 websites on is basically compliance. And if a website  
4 is missing alt-text on unimportant images, I say you've  
5 got to fix that. But in fact, the alt-text on those  
6 unimportant images is not important for access by  
7 screen readers.

8 BY MR. PLUNKETT:

9 Q. Did you form an opinion about whether  
10 Target.com is compliant with the standards and  
11 guidelines that you applied?

12 A. Yes, I did.

13 Q. And what was your opinion?

14 A. It is not.

15 Q. Did you form an opinion about whether or not  
16 Target.com is accessible to blind users?

17 A. Yes, I did.

18 Q. What is your opinion?

19 A. It's not.

20 Q. What is your opinion that it is not  
21 accessible based on?

22 A. Well, based first on -- on my looking at  
23 approximately 15 pages and analyzing them specifically  
24 in -- I looked at four categories. One is whether or  
25 not the images had text equivalence, whether or not

1 a product, for example?

2 MR. PARADIS: We're talking about a blind  
3 user with screen reader software?

4 MR. PLUNKETT: Yes. Thank you.

5 THE WITNESS: Is it possible for a blind user  
6 to not be inundated with the missing -- not be bothered  
7 by the missing alt-text on all those imagemaps and just  
8 instead go to the search field and search for a  
9 product, yes, that's possible.

10 BY MR. PLUNKETT:

11 Q. Is it possible for a blind user to skip past  
12 those annoying elements at the beginning of the home  
13 page and go to the department links?

14 A. Actually, the annoying elements are at the  
15 bottom. So if -- if you -- if you want to go to the  
16 search button or you want to go to the main department  
17 links, you don't have to hear those imagemap links.

18 I just -- I'm amused of thinking of -- of  
19 avoiding those -- those links; whereas, I'm sure that  
20 the developers or the designers of the Target.com site  
21 do everything in their power that they can think to do  
22 to get people to look at exactly those things that  
23 you're asking me is it possible for a blind user to  
24 avoid. I mean, those are the things they want -- the  
25 specials they want to sell.

1 accessibility, the way I define it is applying certain  
2 standards and guidelines.

3 If -- if you -- if you want to ask the  
4 question is it possible for someone to complete a task  
5 on a site that lacks alt-text, absolutely. And I've  
6 given examples where images are really not important  
7 and they aren't compliant if they don't have alt-text  
8 but they don't bother anybody if they don't. However,  
9 if you have important images that lack alt-text, you  
10 often won't be getting -- not getting information that  
11 you need. So there's a gradation in terms of number  
12 one.

13 Q. You stated earlier that you formed the  
14 opinion that Target.com was both noncompliant and  
15 inaccessible. Are those two opinions based on  
16 different sets of evaluations that you conducted?

17 A. No, those are the same.

18 Q. So in your opinion, Target.com is  
19 inaccessible because it's noncompliant?

20 A. In my opinion, Target.com is inaccessible in  
21 the items that I've talked about in both my declaration  
22 and report, namely, lack of image -- lack of alt-text  
23 on important images -- on images, lack of labeling of  
24 forms, lack of navigation on a page and keyboard  
25 access.

1 Q. And in those respects, Target.com is  
2 inaccessible in your opinion because it's not in  
3 compliance with the standards and guidelines; is that  
4 right?

5 MR. PARADIS: Objection; asked and answered,  
6 vague and ambiguous.

7 THE WITNESS: Ask again, please.

8 MR. PLUNKETT: Can you read it back.

9 (Record read as follows:

10 "QUESTION: And in those respects, Target.com  
11 is inaccessible in your opinion because it's  
12 not in compliance with the standards and  
13 guidelines; is that right?")

14 THE WITNESS: Yes, that's right.

15 BY MR. PLUNKETT:

16 Q. In order to determine whether a website with  
17 images that lack text equivalence is inaccessible in  
18 addition to being noncompliant, would you need to make  
19 a determination of how important that particular image  
20 is to the ability of the user to access the goods and  
21 services of that site?

22 MR. PARADIS: Objection; incomplete  
23 hypothetical.

24 THE WITNESS: I -- as I have already stated,  
25 when I do website evaluation, there are -- there are

1 certain conditions that -- that are -- are so clear  
2 and -- and so simple that I don't make any exception to  
3 images being unimportant or images being very  
4 important. Every image needs a text equivalent.

5 It's easier to just take compliance -- a  
6 better example which you haven't raised, we haven't  
7 talked about at all is forms because forms, most of the  
8 time, work correctly. But most of the time, it's not  
9 good enough. So I insist that forms always be labeled,  
10 in effect, they be client -- be compliant to be sure  
11 that -- that the website or that the page will be  
12 usable by a person who is blind.

13 BY MR. PLUNKETT:

14 Q. In your review of the images on Target.com  
15 which lack text equivalence, did you evaluate whether  
16 or not the inaccessibility of that particular image  
17 would have an impact on the user's ability to access  
18 the goods and services of Target.com?

19 A. That -- that was not my -- my purpose in  
20 writing -- in -- in the evaluation that I wrote down.  
21 For example, when I go to a page, the first thing I  
22 look at is how many images that are active are missing  
23 alt-text. If 29 out of 40 images are missing alt-text,  
24 active images are missing alt-text, that's very  
25 serious. I don't look at where they are and -- and how

1 important they are.

2 Q. Is it fair to say, then, in evaluating this  
3 component of Target.com you did a quantitative analysis  
4 not a qualitative analysis?

5 A. Actually, yes, that's fair to say except  
6 the -- the qualitative analysis is that in the case of  
7 Target.com, the lack of alt-text made the experience  
8 particularly difficult. In other words, the  
9 qualitative thing came in in the strange number of  
10 words and letters and characters that many of the  
11 witnesses have testified to.

12 Q. Skipping to your fourth criteria which is  
13 keyboard access, are there standards or guidelines for  
14 keyboard access in Section 508 or the WCAG Version 1.0?  
15 I did not see them cited in your declaration.

16 A. Is it okay if I check the report?

17 Q. Sure. Of course.

18 MR. PARADIS: Can I take a break, then?

19 MR. PLUNKETT: Sure. Go off the record.

20 (Recess taken.)

21 MR. PARADIS: Stuart, I may have five -- I  
22 may want five minutes at the end.

23 MR. PLUNKETT: Just tell me when I have to  
24 stop. I mean, I'm going to be not asking a whole bunch  
25 of stuff I wanted to ask, but that's the agreement we

1 made.

2 MR. PARADIS: Sure.

3 MR. PLUNKETT: So I'm going to -- I know I'm  
4 skipping around. Are we on the record?

5 MR. PARADIS: There was a question pending.  
6 Can you reread the last question?

7 (Record read as follows:

8 "QUESTION: Skipping to your fourth criteria  
9 which is keyboard access, are there standards  
10 or guidelines for keyboard access in Section  
11 508 or the WCAG Version 1.0? I did not see  
12 them cited in your declaration.")

13 THE WITNESS: In my report on Page 21 of  
14 Exhibit 9, there's a table of the various kinds of  
15 problems that I looked at. And the last one is,  
16 "Interaction with each page (shopping in particular)  
17 must be possible without a mouse." And it refers to  
18 508 Provision 1194.22(n) and Web Content Accessibility  
19 Guidelines Checkpoint 9.2.

20 BY MR. PLUNKETT:

21 Q. On that table where it has "n/a," what does  
22 that indicate? I see three places where there's an  
23 n/a.

24 A. Meaning that there aren't corresponding  
25 standards for those particular items.

1 can use, is the guidelines and standards. That's what  
2 the companies need to use. But if for some one reason  
3 still a blind person can't use it, we have to look into  
4 why.

5 Q. Do you agree that blind users' experiences on  
6 a website will vary based on different factors?

7 MR. PARADIS: Objection; vague and ambiguous.

8 THE WITNESS: Definitely true.

9 BY MR. PLUNKETT:

10 Q. What are some of those factors, in your  
11 opinion?

12 A. Some of those factors are whether -- whether  
13 the web page has text equivalence for its images,  
14 whether it has forms labeled, whether you're able to  
15 navigate conveniently, whether you can use the keyboard  
16 and you get everything that's on the page.

17 Q. Are there factors other than the design of  
18 the web page that will impact the blind user's  
19 experience?

20 A. There was a -- there have been some studies  
21 of the way blind users access the web, and there are  
22 really different strategies for -- that have been  
23 learned by those users over the years. So they -- they  
24 attack a web page in different ways.

25 Some tend to use links list to start off

1 which, in the case of the home page of Target.com, is a  
2 bad place to start off because you get those very long  
3 links composed of numbers and letters. Others will  
4 want to just tab through the page to discover its  
5 structure. Others will listen to the whole page.

6 So there are different strategies, and some  
7 of them would work better than others in -- in -- in  
8 especially addressing a page that is very poorly  
9 designed through the guidelines and standards.

10 Q. So the blind user's strategy for accessing a  
11 web page will have an effect on his or her experience  
12 on the web page?

13 A. I think that's true.

14 Q. What about the blind user's experience with  
15 computers generally?

16 A. That would come into play.

17 Q. What about the particular type of computer  
18 that the blind user is using?

19 A. I'm thinking more with the blind user is  
20 using a computer that -- a very old computer, then,  
21 yes, that would definitely impact that experience.

22 Q. What about the blind user's experience with a  
23 particular screen reader that he or she is using?

24 A. Sure, that's going to affect it.

25 Q. What about the type of operating system that

1 the blind user is employing?

2 A. I've been assuming all the way we're using  
3 Windows and Internet Explorer in this discussion.

4 Q. But if a user were accessing -- withdraw.  
5 If a user were employing a different  
6 operating system?

7 A. There -- since there are -- we're talking  
8 about blind users, I believe so, since there are not  
9 good screen readers in other operating systems, which  
10 operating system is being used is very important.

11 Q. What about which web browser is being used?

12 A. On my machine there are about four --  
13 Netscape, Opera, Internet Explorer, Home Page Reader.  
14 There's another one, Firefox. None of them compare  
15 favorably for a screen reader to use to Internet  
16 Explorer. All of them are inferior to Internet  
17 Explorer for a screen reader user.

18 Q. Will the blind user's experience on a  
19 particular website depend on the particular screen  
20 reader that he's using, including the version of that  
21 screen reader?

22 A. Yes, to some extent. Less so since the two  
23 major screen readers in this country are Internet --  
24 Internet Explorer -- are JAWS and Window-Eyes. I think  
25 that the experience for JAWS and Window-Eyes user is

1 very similar and so that covers the vast majority of  
2 blind users.

3 Q. What about the version of JAWS or Window-Eyes  
4 that the user is employing?

5 A. We've already discussed that some -- sorry.  
6 We've discussed that to some extent. There have  
7 been -- I'm sure the developers don't see it as minor  
8 changes, but there have been minor changes in the  
9 recent four or five releases.

10 There was a major change that I mentioned  
11 earlier with the advent of the single letter keys for  
12 navigating the structures of documents. So I think  
13 that -- that the experience could be quite different if  
14 you were in a version before that major change and  
15 relatively unimportant in our conversation since then.

16 Q. Do you agree that more recent versions of  
17 screen readers have made websites more accessible even  
18 though a particular website may not have been  
19 redesigned for accessibility?

20 A. I don't believe that recent versions of  
21 screen readers make websites more or less accessible.

22 Q. And by "recent versions," are you talking  
23 about the last couple of years?

24 A. I don't think -- I don't think that versions  
25 of -- of screen readers make websites accessible

1 whether a couple years or five years. I think what  
2 makes them accessible is whether or not they have the  
3 right kind of code in a web page, whether the images  
4 have text equivalence and the forms are labeled, so on.

5 Q. You don't agree that a particular website  
6 will be more accessible to a blind user if he has a  
7 screen reader that was designed yesterday as opposed to  
8 one that was designed seven years ago?

9 A. That was a double negative, I think. And I'm  
10 not sure how to answer it. Would you rephrase?

11 Q. Right. Yes.

12 Is it your opinion that the type of screen  
13 reader somebody is using has no effect on the  
14 accessibility of a website?

15 A. It has -- the type -- the version of screen  
16 reader the user -- the blind user is using has a  
17 definite effect, especially when you're talking about a  
18 big gap, has a definite effect on the experience of  
19 that user. I don't think it has any effect on the  
20 accessibility of the web page.

21 Q. Why?

22 A. Because the accessibility of the web page is  
23 whether or not it has certain characteristics that  
24 we've gone over several times.

25 Q. Because the accessibility of a web page is

1 question is: Well, maybe the text could be -- the  
2 current situation is pay. It might include that fact  
3 that you've already gone through blah, blah, blah in  
4 the current situation to pay. All of those would be  
5 adequate, but it's not clear which one is best.  
6 Different designers will do different ways and all of  
7 them will be acceptable.

8 Q. Is it correct that, as with the Proceed to  
9 Checkout button, the progress bar is compliant because  
10 it has alt-text -- it just has alt-text that, in your  
11 opinion, does not assist the user?

12 A. No, that isn't quite accurate here because  
13 the requirement of both standards and guidelines is  
14 that the text equivalent be provided. And I think  
15 there's no sense in which that image has a text  
16 equivalent, which is Target.com.

17 Q. In your opinion, would the inability of a  
18 blind user to see this progress bar affect his ability  
19 to complete a purchase on Target.com?

20 A. In a marginally so, yes (sic). Knowing where  
21 you are is helpful. That's the purpose of the progress  
22 bar. The reason the developers put it there is to help  
23 the sighted user know what stage they are. So, yes, I  
24 think it's a reasonable part.

25 Q. Did you evaluate whether there are other ways

1 for the user to know where they are in the checkout  
2 phase?

3 A. No. And I -- and that's -- that's --  
4 that's -- that's been a subject of other questions like  
5 the problem with all the links on the front page, the  
6 home page. The fact that there are alternative  
7 techniques that you might be able to find doesn't  
8 forgive the process of doing it right in these other  
9 cases.

10 Q. You mentioned the example of the investor  
11 page?

12 A. Yeah.

13 Q. And you state that the links on the left that  
14 the -- the links on the top of the investor page are  
15 not accessible.

16 MR. PARADIS: Where are you referring to?

17 MR. PLUNKETT: Page 4 of the report.

18 THE WITNESS: Page 18 of the --

19 MR. PLUNKETT: Of the document.

20 MR. PARADIS: Okay. I'm there.

21 BY MR. PLUNKETT:

22 Q. You mention on this page that the navigation  
23 menu down the left side of the investor page does have  
24 the alt-text; whereas, the links across the top do not;  
25 is that right?

1           And I think -- and I -- and the people who do  
2 guidelines and standards think usually is not good  
3 enough for forms. One has to be certain that the  
4 information that you're typing in is the information  
5 that's required for that object or the thing you're  
6 agreeing to with a check box is exactly what it is  
7 you're agreeing to. The question you're answering with  
8 a radio button is unequivocally that question that  
9 you're hearing on the screen reader. And the way you  
10 do that is by following the standards and guidelines to  
11 label the forms.

12           It is the fact that many websites today  
13 are -- have very few alt-text errors but very few  
14 websites have complete form labeling. And the reason  
15 is it usually works. And I say usually is not good  
16 enough.

17           Q. Did you evaluate whether the forms on  
18 Target.com could be filled out by a blind user despite  
19 this labeling issue?

20           A. I did not do each one and make sure they  
21 spoke correctly.

22           Q. Did you evaluate whether or not a user of  
23 JAWS could complete the forms on Target.com by  
24 switching back and forth between forms mode and normal  
25 mode?

1 A. I did not evaluate that.

2 Q. The next issue you identify are techniques  
3 for navigation. And the first thing you mention are  
4 the inability to skip static navigation links on  
5 Target.com. Is that -- am I identifying that issue  
6 correctly?

7 A. I don't remember using the word "static."

8 Q. Let's take a look at paragraph 47 and 48. I  
9 would just ask you to review those and describe to me  
10 what the navigation issue is that you're identifying.

11 A. As I begin that paragraph, I say that the  
12 navigation issue is more subtle. And the reason it's  
13 more subtle is that, as sighted users and developers,  
14 evaluators, we don't think of navigating a page because  
15 we do it automatically. And the web designer does it  
16 automatically by bringing our focus using large print  
17 or a large picture. Automatically we know how to find  
18 things on a page.

19 When a keyboard user or a screen reader user  
20 comes to a page, there are real issues on how you  
21 navigate it: Do you list all the links and try to find  
22 something that way, do you use the JAWS "find" command,  
23 do you try to tab through everything on the page.

24 And these techniques are often very  
25 burdensome and discouraging and confusing. I've

1 question.

2 MR. PLUNKETT: Yes.

3 BY MR. PLUNKETT:

4 Q. Is it your opinion that a blind user of  
5 Target.com cannot access the website's goods and  
6 services because of these navigation links at the top  
7 of the page that don't have coding that allow them to  
8 be skipped easily?

9 A. No, it's not my opinion that blind users  
10 cannot access the page.

11 Q. It's your opinion that it's more difficult?

12 A. Yes, it is my opinion that it's much more  
13 difficult to not have some way to facilitate in-page  
14 navigation, much more difficult.

15 Q. Isn't it true that the user's ability to skip  
16 past these links will depend on the type of screen  
17 reader that's being employed?

18 A. You asked a number of questions back a while  
19 about the version and level of competence of the screen  
20 reader user. This is a good example of that because  
21 all -- excuse me -- Window-Eyes and JAWS both have skip  
22 commands, skip to the next non-link text, skip to the  
23 next non-link text that's longer than 42 characters and  
24 things like that.

25 The problem with these is that they're not

1 Provision (p), as in Peter, with the Section 508  
2 Standards.

3 When -- when the text gets -- when the page  
4 gets really big and full, then finding something is  
5 more difficult to the point of perhaps being  
6 impossible, leading to be discouraged or not being able  
7 to complete the task.

8 Q. It's true, though, that there are functions  
9 on the screen readers that allow the user to navigate  
10 pages that do not have marked up headings, correct,  
11 such as search functions?

12 A. Yes. A good example of that would be using  
13 the built in search functions in either Windows-Eyes or  
14 JAWS. For example, if you talked about trying to find  
15 the Continue Checkout button, you could say, well,  
16 don't -- don't try to tab through. Just search for  
17 "Continue Checkout." Of course if you did that, they  
18 wouldn't find it because Continue Checkout is not the  
19 alt-text on the button; "Proceed to Checkout" is.

20 Q. So you would search for the word "checkout"?

21 A. That's a good idea.

22 MR. PLUNKETT: Pardon me while I check my  
23 notes.

24 BY MR. PLUNKETT:

25 Q. If you could turn to Page 13 of that

1 document, which is the end of paragraph 60 of your  
2 declaration.

3 A. Yes.

4 Q. It reads, "As of April 12, 2006, the website  
5 of the Target Corporation is virtually unusable by a  
6 visitor who is blind."

7 Is that your opinion today, as of today?

8 A. Yes, that's my opinion as of today.

9 Q. Let me restate that question.

10 As of today, is it your opinion that the  
11 website of the Target Corporation is virtually unusable  
12 by a visitor who is blind?

13 A. Yes.

14 Q. Does that mean that a blind person, in your  
15 opinion, cannot make a purchase on Target.com?

16 MR. PARADIS: Objection; incomplete  
17 hypothetical.

18 THE WITNESS: Um, no. I think it is -- it is  
19 actually possible for a blind person to make a purchase  
20 on Target.com. I -- I am as close to certain as I can  
21 be that no blind person has ever made a purchase on  
22 IBM -- excuse me -- on Target.com.

23 MR. PLUNKETT: Can you read the last sentence  
24 of that answer.

25 (Record read as follows:

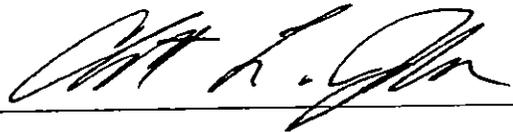
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CERTIFICATE OF REPORTER

I hereby certify that the witness in the foregoing deposition, DR. JAMES THATCHER, was by me duly sworn to testify to the truth, the whole truth and nothing but the truth, in the within-entitled cause; that said deposition was taken at the time and place herein named; that the deposition is a true record of the witness's testimony as reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting by computer.

I further certify that I am not interested in the outcome of the said action, nor connected with nor related to any of the parties in said action, nor to their respective counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of June, 2006.



CHRISTINE L. JORDAN, CSR #12262  
STATE OF CALIFORNIA