

Revised Mock Trial Hypothetical

Husky is a leading optical product manufacturer which sells lenses to spectacle shops in Husky Chain. Conventionally, spectacle shops must engage a variety of operations after a customer select his or her frame. Such operations include (1) selecting spectacle lenses based on the prescription for the customer, (2) placing an order for the lenses with Husky headquarter, (3) grinding lenses according to the frame shape (“edging”), forming a bevel on an edged lens (“beveling”) with various machines in accordance with the prescription, lens information and frame information of the customer, and (4) fitting the lenses in the frame. The shops need to hire an employee with knowledge of ophthalmology because such knowledge is necessary to calculate the shape of a beveled lens and fit the lens completely into the selected frame. Particularly, if an employee miscalculates and selects a lens of an improper shape (external shape of the lens, shapes of the front and rear surfaces of the lens, lens thickness, etc.), a bevel cannot be optimally formed.

Husky invented a spectacle lens supply method in which non-experienced employee can select a proper lens by providing information on lens, frame, prescription, etc. to calculate a desired lens shape. Employees at Husky spectacle shops can send data necessary for the calculation through a terminal that was provided by Husky. A computer at Husky calculates the data to decide whether a lens process including a beveling is possible. This calculation result is transmitted to the terminal. When a lens process is possible, the spectacle shop will confirm an order so that a lens is delivered from Husky. Husky obtained U.S., German and Italian patents. All three patents include only one claim with exactly the same terms which read:

Husky Patent 5,654,321

1. A spectacle lens supply method for a system which includes a means to input data at a lens orderer side and a means to receive the data which is connected to a computing device at a lens processor side and connected to the input means through a communication line, for supplying spectacle lenses, said spectacle lens supply method comprising steps of:
 - 1) transmitting processing condition data, which includes at least one of lens information, frame information, prescription values, layout information and processing information, to the computing device via the data receiving means;
 - 2) calculating a desired lens shape including a bevel figure by the computing device in accordance with the processing condition data transmitted thereto;
 - 3) creating accept/reject information as to whether a lens process including a beveling is possible or not, by the computing device in accordance with the

result of the calculation, and transmitting the accept/reject information to the input means; and

- 4) Receiving the accept/reject information at the input means to permit the orderer side to confirm an order to make a lens according to the calculated lens process.

The Husky '321 patent includes a disclosure of the invention which is the same as the disclosure in the attached U.S. Patent 5,485,399.

Husky found out its competitor located in Portland, Oregon, U.S.A., Dragon Glass MFG., supplies lenses directly to U.S. consumers using a method similar to its patented method for replacing their lenses. Their German and Italian subsidiaries supply lenses to Italian and German consumers respectively. However, Dragon does not provide dedicated terminals to their customers. Instead, it ships consumers a tool for measuring all data listed in the step 1) of the Husky Patent claim. Dragon and its subsidiaries prepared webpages from which consumers can download software to control the tool. When the tool is connected to a consumer's computer and a spectacle frame is inserted into the tool, the tool automatically measures the necessary data listed in the claim step 1). Consumers can select lenses on the webpage and input data following instructions. The data is transmitted to Dragon's computer servers in U.S., Germany and Italy to calculate a desired shape of lens. Dragon's computer servers create accept/reject information as to whether a lens process including a beveling is possible or not. Instead of displaying the accept/reject information, Dragon and its subsidiaries email such information to consumers who placed the order. Consumers can confirm their order by clicking "confirm order" and input credit card via the Dragon web page when they receive the email. With the confirmation of payment for shipping and lenses, Dragon and its subsidiaries will ship the finished lenses to the consumers. Consumers can fit lenses into the frame by themselves or bring lenses to spectacles shops which have contract with Dragon and its German and Italian subsidiaries. These shops will fit lenses into the frame with a very minor cost.

Dragon's webpage is prepared in English and gives detailed instructions on how to download the software and how to use the tool to measure and input the necessary data in respective languages. Dragon's subsidiaries provide the same information in German and Italian at their webpage respectively. English webpage is located in Dragon's server in U.S., German webpage is located in Dragon's German subsidiary's server in Germany, and Italian webpage is located in Dragon's German subsidiary's server in Italy.

Husky sent cease and desist letters with a copy of U.S., German and Italian patents to Dragon and its subsidiaries which did not stop their operations. Husky sued Dragon and its subsidiaries in U.S., Italy and Germany respectively.