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**Datasheet for the decision  
of 8 February 2007**

**Case Number:** T 1122/04 - 3.2.04

**Application Number:** 98201468.0

**Publication Number:** 0882404

**IPC:** A22C 17/04

**Language of the proceedings:** EN

**Title of invention:**

Compact automatic machine for performing the boning cut on  
legs of ham

**Patentee:**

MBA S.r.l.

**Opponent:**

MACCHINE SONCINI ALBERTO S.P.A.

**Headword:**

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**Relevant legal provisions:**

EPC Art. 100(a)

**Keyword:**

"Main request - Novelty (yes) - Inventive step (yes)"

**Decisions cited:**

-

**Catchword:**

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Case Number: T 1122/04 - 3.2.04

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.04  
of 8 February 2007

**Appellant:** MACCHINE SONCINI ALBERTO S.P.A.  
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**Respondent:** MBA S.r.l.  
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**Representative:** Modiano, Micaela Nadia  
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**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted 2 August 2004  
rejecting the opposition filed against European  
patent No. 0882404 pursuant to Article 102(2)  
EPC.

**Composition of the Board:**

**Chairman:** M. Ceyte  
**Members:** C. Scheibling  
T. Bokor

## Summary of Facts and Submissions

- I. By its decision dated 2 August 2004 the Opposition Division rejected the opposition. On 14 September 2004 the Appellant (opponent) filed an appeal. The appeal fee was paid on 9 September 2004. The statement setting out the grounds of appeal was received on 1 December 2004.
- II. The patent was opposed on the grounds based on Articles 100(a) (54 and 56) and 100(b) EPC. The objection under Article 100(b) EPC was withdrawn during the oral proceedings before the Opposition Division.
- III. Claims 1 and 28 as granted read as follows:
- "1. Automatic machine for performing the boning cut on the bone (5) of legs of ham (4) or the like, comprising a frame (1) containing at least one loading station (100) and at least one cutting station (200) provided with a plurality of cutting groups (221, 222, 223, 224, 225, 226) for cutting the leg of ham (4), supporting means (12) for supporting the leg of ham (4) which can be positioned at the loading/unloading station and/or cutting station and which are provided with devices (13, 14) for retaining the leg of ham (4), characterized in that it further comprises alignment adjusting means (24) for adjusting the bone (5) by forming an axis of orientation along which the bone (5) of the leg of ham is arranged for support at said supporting means (12), said cutting station (200) being further provided with an imprinting group (210) adapted for imprinting operations."

"28. Method for performing the boning cut on the bone (5) of legs of ham (4) or the like carried out on a machine according to any of the claims 1-27, comprising the steps of:

- supporting a leg of ham, at a station for loading/unloading, on supporting means with the bone aligned along an orientation axis formed by way of alignment adjusting means;
- arrange said supporting means with said leg of ham supported thereon at a cutting station comprising imprinting and cutting groups;
- carrying out an imprinting operation with said imprinting group which consists in performing a circular incision around the end section (5a) of the bone (5);
- performing the boning cut by way of said cutting groups; and
- unload the processed leg of ham from said supporting means."

IV. Oral proceedings before the Board took place on 8 February 2007.

The Appellant (opponent) requested that the decision under appeal be set aside and that the patent be revoked.

He mainly argued as follows:

The subject-matter of claim 1 as granted lacks novelty over D1: EP-B-0 753 260. Even if the subject-matter of claim 1 were found to be novel, it would not involve an inventive step with respect to D1, since the object of claim 1 could only differ from the machine according to D1 in that it provides "adjusting means" which however,

consist in the skill of the operator and therefore do not imply any technical means. Furthermore, to provide the cutting station with an imprinting group does not contribute to solve the same problem as the "adjusting means" and merely corresponds to an alternative arrangement of the imprinting tool which does not involve an inventive step.

The Respondent (patentee) countered the Appellant's arguments and mainly argued as follows:

D1 discloses neither an operating station comprising cuttings groups as well as an imprinting group, nor means for forming an axis of orientation.

This axis of orientation is a material projection of a light beam along which the femoral bone of the leg of ham is arranged, i.e. a technical feature which is neither disclosed nor suggested in any of the cited prior art documents.

Therefore, the subject-matter of claims 1 and 28 as granted involves an inventive step.

The Respondent requested that the appeal be dismissed (main request) or that the patent be maintained on the basis of the set of claims according to the first or second auxiliary requests submitted by letter of 8 January 2007.

## **Reasons for the Decision**

1. The appeal is admissible.

2. *Interpretation of claims 1 and 28:*

Claims 1 and 28 refer to "alignment adjusting means (24) for adjusting the bone (5) by forming an axis of orientation along which the bone (5) of the leg of ham is arranged for support at said supporting means (12)". In the light of the description (especially, paragraph [0028]) it is clear that the "alignment adjusting means" are means for forming a visible image of the axis of orientation on the supporting means.

3. *Novelty:*

3.1 Novelty has solely been challenged with respect to D1: EP-B-0 753 620.

3.2 It is not disputed that D1 discloses all the features of pre-characterising part of Claim 1.

3.3 However, none of the embodiments disclosed in D1 shows a cutting station that is further provided with an imprinting group.

The Appellant argued that the wording of claim 1 refers in its preamble to "at least one cutting station" and in its characterising part to "said cutting station". Thus, claim 1 also contemplates the presence of more than one cutting station, which means that a given cutting station is not compulsorily provided with an imprinting group.

However, the wording of claim 1 which reads "said cutting station (200) being further provided with an

imprinting group (210)" implies that at least one cutting station is equipped with an imprinting group. Alone for this reason the subject-matter of claim 1 is novel with respect to D1.

- 3.4 Furthermore, D1 does not disclose "alignment adjusting means (24) for adjusting the bone (5) by forming an axis of orientation".

The Appellant argued that aligning and adjusting the leg of ham solely relies on the capability of the operator, so that this feature does not have a technical character.

However, as has been explained, the claimed alignment adjusting means are also provided for "forming an axis of orientation", that is for representing the axis of orientation in a physically perceptible form on the support surface. This feature which clearly has a technical character is not disclosed in D1.

- 3.5 Claim 28 is directed to a method for performing the boning cut on a machine according to claim 1, comprising also the step of aligning the bone along an orientation axis formed by way of alignment adjusting means. Consequently, the findings referred to above with respect to the novelty of the device according to claim 1 apply mutatis mutandis also to the corresponding method according to claim 28.

- 3.6 Thus, the subject-matter of claims 1 and 28 is novel with respect to D1. The Board is satisfied that novelty is also given with respect to all other cited documents.

4. *Inventive step:*

4.1 It is not disputed that D1 represents the closest prior art.

The machine according to claim 1 differs from that disclosed in D1 in that:

it further comprises alignment adjusting means for adjusting the bone by forming an axis of orientation along which the bone of the leg of ham is arranged for support at said supporting means, said cutting station being further provided with an imprinting group adapted for imprinting operations.

4.2 One of the drawbacks of D1 is that the variety of shapes of legs of ham, which may be of the right-hand or left-hand type and the different dimensions thereof result in a different spatial position of the end of the femoral bone, with the consequent need for adjustment of the position of the cutting tools (paragraph [0006] of the patent specification).

4.3 Thus, the problem to be solved by the invention as claimed which results from the above drawback can be seen in providing a machine which allows both right-hand and left-hand legs of ham to be processed, independently of their size and which is less bulky (paragraphs [0007] and [0009] of the patent specification).

This is achieved by the claimed means for forming an axis on the support means, along which the femoral bone of the leg of ham is aligned and adjusted. Thus, contrary to the machine known from D1, there is no need either to duplicate or to rotate the cutting tools



through a predetermined angle in order to adjust the position of the tools to cope with the orientation of the femoral bone of the leg of ham depending on whether it is of the right-hand or left-hand type.

4.4 The Appellant argued that also in D1 an operator aligns and adjusts the femoral bone of the leg of ham and that paragraph [0023] even discloses an optical sensor to determine the orientation of the leg of ham.

4.5 There is no doubt that in D1, the operator orientates the leg of ham when loading it on the support means, as can be inferred from Figures 2, 12 and 18 which show that all legs of ham are oriented in the same general direction; however there is no indication in D1 that the orientation is performed such that the femoral bone is aligned with an axis which is represented in a physically perceptible form on the support means.

Paragraph [0023] of D1 solely refers to a "detection element" such as an "optical sensor", "designed to determine the orientation". The terms "detection", "sensor" and "determine" make it clear that information is only "collected", i.e. the system registers the orientation of the leg of ham, in order to distinguish between a right-hand and a left-hand orientation on the carriage and to correspondingly activate the tools. This passage does not suggest adjusting the orientation of the leg of ham itself which at this stage is already fixedly secured to the supporting means.

4.6 The Appellant further argued also that in D1 the operator will necessarily align the femoral bone parallel to the axis of the cutting tool, which thus

defines an axis of orientation in the meaning of claim 1.

- 4.7 The Board admits that the operator will certainly position the legs of ham in such a manner that they are correctly oriented with respect to the cutting tools. Nevertheless, D1 does not disclose how the operator proceeds when loading a leg of ham on the support means. Furthermore, in D1 the cutting groups can be rotated or are duplicated to take into account the different spatial orientation of the femoral bone of the legs of ham of the right-hand and of the left-hand type (column 4, lines 21 to 28; column 5, lines 49 to 58). This clearly means that, depending on whether the leg of ham is of the right-hand or the left-hand type, the femoral bones of the legs of ham are oriented differently. In contrast thereto, according to claim 1 all legs of ham are aligned along one single axis of orientation. Finally, in D1 the cutting groups are not located at the loading station, thus even if an operator were able to picture mentally a parallel to the axes of the cutting tools, there would still be no means for representing these axes in a physically perceptible form at the loading station. Thus, the allegation of the Appellant is neither supported by D1, nor does D1 suggest orientating the femoral bone of the leg of ham along an axis of orientation represented in a physically perceptible form on the supporting means so as to avoid the duplication of the cutting stations for the right-hand or left-hand legs of ham or the rotation of the cutting tools in accordance with the right-hand or left-hand type of legs to be processed.

4.8 Consequently, even if taking into consideration the capability of a skilled person, D1 does not lead to the subject-matter of claim 1 as granted.

These conclusions apply mutatis mutandis to the subject-matter of claim 28.

The other cited documents are wholly silent with respect to the representation of an axis of orientation in a physically perceptible form along which the femoral bone of the leg of ham is arranged, this representation being necessary to solve the technical problem suggested in the patent in suit.

Thus, the subject-matter of claims 1 and 28 involves an inventive step with respect to D1 taken alone or in combination with any of the other cited documents.

The Appellant also argued that to provide the cutting station with an imprinting group does not contribute to solve the problem of allowing both right-hand and left-hand legs of ham to be processed. However, even if this feature does not contribute to solve the above stated partial problem, the fact that the remaining features solve said problem in a non obvious manner already confers inventiveness to the subject-matter of claims 1 and 28.

5. Since the main request of the Respondent can be granted, it is superfluous to examine his auxiliary requests.

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The registrar:

The Chairman:

G. Magouliotis

M. Ceyte