

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* MICHAEL MULLER, STEFAN BREHM and BERND KLITSCH

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Appeal 2007-1588  
Application 10/964,098  
Technology Center 3600

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Decided: April 30, 2007

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Before WILLIAM F. PATE III, TERRY J. OWENS, and  
JENNIFER D. BAHR, Administrative *Patent Judges*.

WILLIAM F. PATE III, *Administrative Patent Judge*.

DECISION ON APPEAL  
STATEMENT OF THE CASE

This is an appeal from the final rejection of claims 1-5 and 7-9. These are the only claims remaining in the application. We have jurisdiction under 35 U.S.C. § 134.

The claimed invention is directed to a vibration damper or shock absorber for a motor vehicle. The vibration damper has a piston rod for connecting to a first part of the automobile and a shaft connected to the vibration damper cylinder connected to another part of the motor vehicle. The shaft has a fork as the connecting member and the fork is attached to the shaft by a cylindrical collar that is axially displaced from the bent portion of the fork.

Claim 1, reproduced below, is further illustrative of the claimed subject matter.

1. A vibration damper for installation between a first mass and a second mass of a motor vehicle, wherein the first mass is subject to vibration, said vibration damper comprising:

a container tube filled with damping medium and having a bottom;

a piston rod connected to the second mass and to a piston which is axially movable in the container tube;

a fastening element comprising:

a shaft fixed to the bottom of the container tube,  
and

a fork having an area connected to the first mass,  
the fork comprising a bent portion axially spaced from the area  
and exposed to dynamically alternating loads, the bent portion  
running into a cylindrical collar axially overlapping and  
coaxially surrounding the shaft, wherein the collar is fixed to  
the shaft at an axial distance from the bent portion.

The references of record relied upon by the examiner as evidence of obviousness are:

Schaefer (Schaefer '398)	US 2,544,398	Mar. 06, 1951
Schaefer (Schaefer '048)	US 2,581,048	Jan. 01, 1952
Niaura	US 6,318,521 B1	Nov. 20, 2001

Claims 1-5 and 7-9 stand rejected under 35 U.S.C. § 103 as unpatentable over Niaura in view of Schaefer '398 or Schaefer '048.<sup>1</sup>

#### FINDINGS OF FACT

Niaura discloses a vibration damper for a motor vehicle having a housing or cylinder 2 and a piston 13 connected to piston rod 16 which is attached to one part of the motor vehicle. A shaft is fixed to the bottom of the container or housing 2. On the bottom of the shaft is a fork member 10. Niaura does not show a cylindrical collar attaching the fork member to the shaft at a point axially distant from the bent portion.

The examiner has cited the two patents to Schaefer to show this feature.

Schaefer '398 discloses a shaft 2 connected to a fork 1. The connection in Schaefer '398 is two jaws with relatively thin walls 7. The jaws are on either side of the shaft and Schaefer '398 can weld the edges of the jaws along the shaft as at 12 in Figure 3.

Schaefer '048 also shows a connection of a shaft 2 to a fork 1. In Schaefer '048 the connection is provided by two semicylindrical members

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<sup>1</sup> The 35 U.S.C. § 102 and 35 U.S.C. § 103 rejections of the claims over Thomas have been withdrawn by the Examiner. See page 2 of the Answer.

7 and 9 that do not overlap and have their adjacent ends spaced apart longitudinally to leave more room for welding, again as at 12 in Figure 5.

## PRINCIPALS OF LAW

“A claimed invention is unpatentable if the differences between it and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the pertinent art.” *In re Kahn*, 441 F.3d 977, 985, 78 USPQ2d 1329, 1334-35 (Fed. Cir. 2006) (citing 35 U.S.C. § 103(a) (2000)); *Graham v. John Deere Co.*, 383 U.S. 1, 13-14, 148 USPQ 459, 467 (1966). “The ultimate determination of whether an invention would have been obvious is a legal conclusion based on underlying findings of fact.” *Id.* (citing *In re Dembicza*k, 175 F.3d 994, 998, 50 USPQ2d 1614, 1616 (Fed. Cir. 1999)).

“In assessing whether subject matter would have been non-obvious under § 103, the Board follows the guidance of the Supreme Court in *Graham v. John Deere Co.* 383 U.S. at 17, 148 USPQ at 467. The Board determines ‘the scope and content of the prior art,’ ascertains ‘the differences between the prior art and the claims at issue,’ and resolves ‘the level of ordinary skill in the pertinent art.’” *Id.* (citing *Dann v. Johnston*, 425 U.S. 219, 226, 189 USPQ 257, 261 (1976)) (quoting *Graham*, 383 U.S. at 17, 148 USPQ at 467). “Against this background, the Board determines whether the subject matter would have been obvious to a person of ordinary skill in the art at the time of the asserted invention.” *Id.* (citing *Graham*, 383 U.S. at 17, 148 USPQ 467).

## ANALYSIS

We do not sustain the rejection of claims 1-5 and 7-9. We are in complete agreement with the Appellants that neither Schaefer reference discloses what can be considered a cylindrical collar overlapping and coaxially surrounding a shaft, and thus neither reference can teach fixing a collar to a shaft at an axial distance removed from the bent portion. In Schaefer '398, the connecting members are two in number and they extend partially circumferentially around the shaft. Inasmuch as Schaefer '398 discloses welding the lateral edges of the jaws to the shaft, it would not have been obvious to make these members circumferential.

With respect to Schaefer '048, Schaefer '048 purposely offsets the cross members 7 and 9 from one another for several reasons, not the least of which is to provide additional space for welding. In our view, it is unreasonable to consider the jaws or the cross members of Schaefer '398 and Schaefer '048, respectively, as suggesting or teaching a cylindrical collar as required by independent claim 1. Therefore, we cannot sustain the examiner's rejection of claims 1-5 and 7-9 under 35 U.S.C. § 103.

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CONCLUSION OF LAW

The examiner has failed to establish a prima facie case of obviousness of claims 1-5 and 7-9.

ORDER

The rejection of claims 1-5 and 7-9 is reversed.

REVERSED

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