

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

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID ALLEN GRANT

Appeal 2007-1478
Application 10/359,861
Technology Center 2800

Decided: July 3, 2007

Before JOHN C. MARTIN, *Administrative Patent Judge*, FRED E. McKELVEY, *Senior Administrative Patent Judge*, and ROBERT E. NAPPI, *Administrative Patent Judge*.

NAPPI, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) of the Final Rejection of claims 2 and 3. Claim 1 has been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

For the reasons stated *infra*, we reverse the Examiner's rejection of claims 2 and 3 and enter a new ground of rejection of claims 2 and 3 under 35 U.S.C. § 103(a). Initially we note that Appellant's Brief does not comply

with 37 C.F.R. § 41.37(c)(1)(viii) as it does not contain a claims appendix; however, as Appellant is *pro se*, in this instance we will overlook Appellant's non-compliance.

INVENTION

The invention is directed to an assembly to light the front license plate of a motor vehicle, such as an automobile. Specification 6-7. Claims 2 and 3¹ are reproduced below:

2. An assembly affixed to the front bumper of a vehicle comprising:
 - (a) A first lighting element, having a first illumination field, directly illuminating a front license plate;
 - (b) A second lighting element, having a second illumination field, overlapping the first field, also directly illuminating a front license plate;
 - (c) A backing assembly supporting the lighting elements;
 - (d) An electrical assembly connected to the headlight harness, in such as to [sic—in such a way as to?] provide electrical power to the lighting elements so long as the vehicle's engine is running.

3. As [sic—An?] assembly separate and distinct from any object surrounding a front license plate, with the first lighting element's field of illumination directly focusing upon a front license plate itself, causing an indirect reflective effect upon individuals and mechanical devices viewing the front license plate.

¹ As noted *supra*, Appellant did not provide a claim appendix. Claims 2 and 3 reproduced above are the claims submitted April 12, 2004, as amended by the After Final Amendment dated August 30, 2004 (amendment entered on appeal as noted by the Examiner's Advisory Action dated September 27, 2004).

REFERENCES

The sole reference relied upon by the Examiner is:

Rice US 5,615,501 Apr. 1, 1997

The additional references we rely upon are:

Hemmert US 1,466,017 Aug. 28, 1923

Volvo, 1998 S70 & V70, Owner's Manual, p. 20 (1998).

2007 Specter Off-Road Color Catalog 158 ("License Lamp Assembly"), available at <http://www.sor.com/sor/cat158.tam?xax=16211&page%2Ectx=cat158%2Etam> (last visited June 19, 2007), which page when printed on letter-size paper yields a six-page document (copy enclosed) ("Specter printout").

Cool Cruisers.Com, supplier of replacement parts for Toyota Land Cruisers, including Toyota License Plate Brackets and Lights, <http://coolfj40.stores.yahoo.net/licplatbrach1.html> (last visited June 19, 2007), which when printed yields a three-page document (copy enclosed) ("Cool Cruisers printout").

EXAMINER'S REJECTION

Claims 2 and 3 stand rejected under 35 U.S.C. § 102(b) as anticipated by Rice.

ISSUES

Appellant contends that the Examiner's rejection under 35 U.S.C. § 102(b) is in error.² Appellant asserts that the Examiner "gratuitously and selectively substitutes parts of Applicant's application for a part of the Rice patent." (Br. 11, heading C.) Further, Appellant argues that "Rice does not encompass direct illumination upon the face of a reflectorized metallic license plate." (*Id.* at 12.)³ Rather, Appellant states that Rice uses indirect illumination of a translucent license plate (*Id.*). In the Reply Brief, Appellant presents similar arguments differentiating illumination of a reflective license plate from illumination of a translucent license plate such as taught by Rice.

The Examiner states:

[First,] Appellant does not recite the reflectorised metallic license plate in the claim. Second, Appellant does not define the meaning of the word "directly" in the specification. When Appellant does not define the meaning of the claim in the specification, the words of a claim must be given their plain meaning. In other words, they must be read as they would be interpreted by those of ordinary skill in the art. *In re Sneed*, 710 F2d 1544, 218 USPQ 385 (Fed. Cir. 1983). If the two lighting elements of Rice are illuminating the license plate behind the license plate without any beam direction modification means, then Examiner must assume that the two lighting elements are illuminating the license plate directly, which is a plain meaning of the word.

² We note that Appellant present several arguments directed to a rejection based upon Solow. (Br. 6-10). However, the Examiner has indicated that the rejection based upon Solow has been withdrawn. Answer 4. Accordingly, the rejection based upon Solow is not before us.

(Answer 7). Thus, the issues before us are: a) whether the claims are limited to illuminating a reflective license plate; and b) whether Rice teaches “directly” illuminating the license plate, as recited in the claims. We note that Appellant has not provided arguments separately addressing the limitations of claims 2 and 3. However, as Appellant is *pro se* and would not be expected to be as familiar with the requirements of 37 C.F.R. § 41.37 as a registered patent attorney or agent, we elect not to group claims 2 and 3 together under § 41.37(c)(1)(vii) and will address claims 2 and 3 separately.

FINDINGS OF FACT

We find that the Examiner has established the following facts based upon a preponderance of the evidence:

- 1) Rice teaches an illuminated vehicle display device which can be mounted on a front bumper of a vehicle. Col. 3, ll. 26-30, 52-57; col. 5, l. 59 to col. 6, l. 5. This illuminated display device can be used “in lieu of a license plate” mounted on the bumper. Col. 5, ll. 59-67
- 2) Rice’s illuminated display consists of two lighting elements 29 supported by a backing assembly 12. *See* Fig. 2.
- 3) The display of Rice includes illuminatable indicia 81, which can include numbers and letters formed by non-opaque portions of a translucent or transparent display panel 80 of which the non-indicia portions are covered with opaque paint 82. Col. 4, ll. 33-38. The indicia are in front of the lighting elements and the light from the

³ By “reflectorized,” we assume Appellant and the Examiner mean

elements shines through the transparent portions and illuminates the indicia (i.e., the light is transmitted through portions of the display). Col. 4, ll. 38-44.

- 4) The lighting elements are connected to the vehicle's lighting circuit and are operated with the vehicle's lighting system. Col. 6, ll. 7-10.
- 5) The backing assembly, item 12, is separate from the housing member, item 14, which surrounds and frames the illuminable indicia. *See* Figs. 2, 4, and 6.

We also find that the record supports the following additional facts by a preponderance of the evidence:

- 6) Hemmert teaches an illuminated license plate for automobiles where the plate is made from opaque and transparent materials. Hemmert at 1, ll. 59-66. Specifically, the license plate includes a colored glass plate 9 and a plate 10 of metal or other opaque material having the license number cut or stenciled therein. *Id.*
- 7) Hemmert's license plate is illuminated from behind (i.e., the indicia are illuminated by transmittance and not reflectance). *Id.* at 1, ll. 81-87.
- 8) Hemmert's lighted license plate assembly may be mounted on the rear or front of a vehicle or different assemblies may be mounted on the rear and front of a vehicle. *Id.* at 1, ll. 42-51.
- 9) According to Appellant, vehicles are required by law to have the rear license plate illuminated. *See* Appellant's "Background of Invention"

"reflective." The term "reflective" is used in claim 3.

- (Specification 5). We agree that at least vehicles in use in the United States are generally required to have a rear license plate illuminated.
- 10) The lighted rear license plate assembly for the 2/1974 through 1984 Toyota Land Cruiser appears to be similar in design and arrangement to Appellant's lighted front bumper license plate assembly. *See* Specter printout, depicting parts assemblies for various models of Toyota Land Cruisers.
 - 11) More particularly, the 2/1974 through 1984 Toyota Land Cruiser had a license plate mounting assembly which included two covered light assemblies directly above the license plate. *See* bracket item 17, light housings 20 and light assembly 1 on pages 1 and 2 of Specter printout. *See also* the individual replacement parts for such a license plate mounting assembly in Cool Cruisers printout.
 - 12) The license plate mounting assembly for the 2/1974 through 1984 Toyota Land Cruiser does not include any frame surrounding the license plate and thus is separate from any frame that surrounds the license plate.
 - 13) The illumination of the license plate for the 2/1974 through 1984 Toyota Land Cruiser is provided by two lights which produce two illumination fields, thus illuminating the plate by reflecting light off of the plate.
 - 14) The license plate mounting assembly for the 2/1974 through 1984 Toyota Land Cruiser is mounted on the rear body panel of the vehicle.
 - 15) The 1998 Volvo S70 & V70 cars were equipped with daytime running lights feature that when activated caused the license plate

lights to come on when the engine ignition is on. *See* page 20 of the 1998 Volvo S70 & V70 Owner's Manual.

- 16) The 1998 Volvo S70 & V70 cars had the front license plate mounted on the front bumper. *See* picture on cover of the 1998 Volvo S70 & V70 Owner's Manual.

PRINCIPLES OF LAW

We may rely on Appellants' disclosure to determine the meaning of the terms used in the claims. During examination, a claim is given its broadest reasonable construction consistent with the specification. *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969). “[I]nterpreting what is *meant* by a word *in* a claim ‘is not to be confused with adding an extraneous limitation appearing in the specification, which is improper.’” *In re Cruciferous Sprout Litigation*, 301 F.3d 1343, 1348, 64 USPQ2d 1202, 1205 (Fed. Cir. 2002).

Anticipation is established when a single prior art reference discloses expressly or under the principles of inherency each and every limitation of the claimed invention. *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1347, 51 USPQ2d 1943, 1946 (Fed. Cir. 1999); *In re Paulsen*, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994).

On the issue of obviousness the Supreme Court has recently stated that “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1739, 82 USPQ2d 1385, 1395 (U.S. 2007).

If a person of ordinary skill can implement a predictable variation, §103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill. . . . [A] court must ask whether the improvement is more than the predictable use of prior art elements according to their established functions.”

Id. at 1740, 82 USPQ2d at 1396. “One of the ways in which a patent’s subject matter can be proved obvious is by noting that there existed at the time of the invention a known problem for which there was an obvious solution encompassed by the patent’s claims.” *Id.* at 1742, 82 USPQ2d at 1397.

ANALYSIS

The first issue is whether the claims are limited to a reflective license plate. Claim 2 does not contain any limitations directed to the license plate being a reflective license plate. Nor do we consider the recitation of a license plate in claim 2 to be inherently limited to such a plate. Thus, we consider the claim 2 to be broad and encompass any type of license plate. However, we note that Rice states that his illuminated display device can be used “in lieu of a license plate.” Fact 1. Although Rice states that the display may contain letters and numbers (Fact 3), it is not entirely clear if such a display corresponds to a license plate of the vehicle. Since (1) we are not certain if the letters and numbers correspond to a license plate of the vehicle and (2) we have what we consider to be more credible evidence of

unpatentability, we will assume for the purpose of the appeal that the display of Rice is not a license plate. Accordingly, with respect to claim 2, we find that Rice does not explicitly teach the license plate as claimed. Therefore, we reverse the rejection of claim 2.

Claim 3 recites an assembly separate from a frame surrounding the license plate. The claim recites that “the first lighting element’s field of illumination focusing on the license plate.” While this limitation is awkward because there is a recitation of a first lighting element without a recitation of a second lighting element, we construe the limitation as “ a first lighting element’s” Claim 3 further recites “causing an indirect reflective effect upon individuals and mechanical devices viewing the front license plate.” This limitation of claim 3 is also awkward; however, we construe this limitation as “causing light to be reflected from the license plate toward individuals and machines viewing the front license plate.” Thus, we construe claim 3 as directed to an assembly that is separate from a license plate frame and when the front license plate is viewed, the light from the illumination source is reflected to the viewer (i.e., the plate is illuminated by reflecting light off of the plate and not by transmission of light through the plate).

As discussed above with respect to claim 2 we do not find that Rice teaches illuminating a license plate. Further, Rice’s display includes transparent and opaque portions, with the light being transmitted through the transparent portions (i.e. the display is illuminated from behind). Fact 3. Thus, in Rice the display is illuminated by transmittance and not reflectance. Accordingly, with respect to claim 3, we agree with Appellant on the first

issue [issue a), supra], as we conclude that claim 3 is directed to illuminating a reflective license plate, which is not taught by Rice.

For the forging reasons, we reverse the Examiner's anticipation rejection of claims 2 and 3 without the need to consider the second issue [issue b), supra].

NEW GROUND OF REJECTION PURSUANT TO
37 C.F.R. § 41.50(b)

37 C.F.R. § 41.50(b)(2006) states:

(b) Should the Board have knowledge of any grounds not involved in the appeal for rejecting any pending claim, it may include in its opinion a statement to that effect with its reasons for so holding, which statement constitutes a new ground of rejection of the claim. A new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.

ANALYSIS

We now enter a new rejection of claims 2 and 3 under 35 U.S.C. § 103(a).

Claim 2 recites an assembly fixed to the front bumper of a vehicle comprising two lighting elements. The 2/1974 through 1984 Toyota Land Cruisers included a lighted rear license plate assembly that included two light sources. Facts 11 and 13. Also, it was known to mount the license plate on the bumper of the vehicle (Facts 1, 16) and to illuminate the front license plate of a vehicle. Fact 8. Claim 2 further recites that the lighting elements are connected to the headlight circuit and provided power when the

engine is running. Having the license plate lights connected to the headlight circuit so that they are on with the engine (ignition on) was also known.

Fact 15. We find that mounting a lighted license plate assembly such as that used on the rear of Toyota Land Cruisers on the front bumper of a vehicle and connecting it to the vehicle's lighting circuit (which is on when the engine is running) is nothing more than a predictable use of prior art elements according to their established functions. That is to say, one skilled in the art would have appreciated that mounting the lighted license plate assembly on the front of a vehicle would illuminate the front plate just as it would the rear plate to solve a known problem, the known problem being what Appellant characterizes as difficulty of seeing a front license plate in the dark. Thus, we hold that the subject matter of claim 2 would have been obvious in view of the lighted license plate assembly of the 2/1974 through 1984 Toyota Land Cruisers, the lighting circuit teachings of the Volvo Owner's Manual, and in view of the known problem of lighting front license plates shown by Rice and Hemmert.

With respect to claim 3, the 2/1974 through 1984 Toyota Land Cruisers included a lighted rear license plate assembly that is separate from any frame that surrounds the license plate. Fact 12. The lights from this assembly illuminate the plate by reflecting light off of the plate. Fact 13. Further, it was known to illuminate front license plates of vehicles. Fact 8. We find that mounting a lighted license plate assembly such as that used on the rear of Toyota Land Cruisers on the front of a vehicle is nothing more than a predictable use of prior art elements according to their established functions. That is to say, mounting the lighted license plate assembly on the

front of a vehicle will illuminate the front plate just as it would the rear plate to solve a known problem, which is the difficulty of seeing a front license plate in the dark. Thus, we hold that the subject matter of claim 3, at least as we understand it, would have been obvious in view of the lighted license plate assembly of the 2/1974 through 1984 Toyota Land Cruisers in view of the known problem of lighting front license plates shown by Rice and Hemmert.

CONCLUSION

Appellant has sustained his burden of showing that the Examiner erred in rejecting claim 2 and 3.

In accordance with 37 C.F.R. § 41.50(b) (2006), and for the reasons given, we reject claims 2 and 3 as being unpatentable under 35 U.S.C. § 103(a) over the prior art cited.

ORDER

The decision of the Examiner is reversed.

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b) (2006).

37 CFR § 41.50(b) provides "[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review."

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37 CFR § 41.50(b) also provides that the appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(1) *Reopen prosecution*. Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner. . . .

(2) *Request rehearing*. Request that the proceeding be reheard under § 41.52 by the Board upon the same record. . . .

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2006).

REVERSED
37 CFR § 41.50(b)

KIS

DAVID GRANT
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CASTAIC, CA 91384

Notice of References Cited	Application/Control No. 10/359,861	Applicant(s)/Patent Under Reexamination	
	Examiner Sandra O'shea	Art Unit 2800	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number	Date	Name	Classification	
		Country Code-Number-Kind Code	MM-YYYY			
	A	US-1,466,017	08-1923	Hemmert	--	--
	B	US-				
	C	US-				
	D	US-				
	E	US-				
	F	US-				
	G	US-				
	H	US-				
	I	US-				
	J	US-				
	K	US-				
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FOREIGN PATENT DOCUMENTS

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	N						
	O						
	P						
	Q						
	R						
	S						
	T						

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)				
*	U	Specter Off-Road.com, Page 158 -- License Lamp Assemblies, http://www.sor.com/sor/cat158.tam?xax=16211&page%2Ectx=cat158%2Etam				
*	V	Cool Cruisers.com, Toyota License Plate Brackets and Lights, http://coolfj40.stores.yahoo.net/licplatbrach1.htm .				
	W	Volvo, 1998 S70 & V70, Owner's Manual, p. 20 (1998).				
	X					

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

1998

VOLVO
S70 & V70

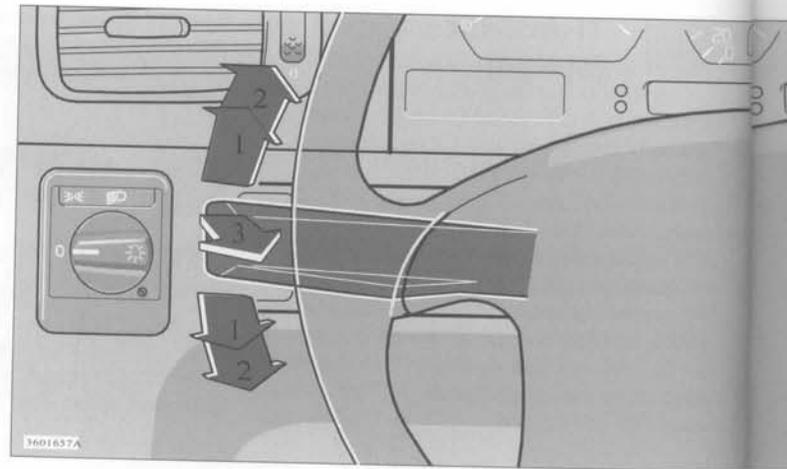


VOLVO

Headlights, Parking lights, Turn signals

Headlights and parking lights

- All lights off *
- ☛ Parking lights on **
- ☛ Headlights and parking lights are on if starting (ignition) switch is in positions I or II.



If the headlight switch is in the position ☛ all lights will go out when the starting switch is switched off.

With the headlight switch in position ☛ the parking lights will stay on (headlights off) with the daytime running light screw (A) in position ○.

The high beams can only be switched on if the headlight switch is in position ☛.

Switch from high to low beams and vice versa by moving the turn signal switch lever on the left side of steering column towards the steering wheel.

* Models equipped with daytime running lights: The low beams, tail lights, parking lights and license plate lights will come on automatically when the ignition is switched on.

** The daytime running lights will also function when the headlight switch is in position ☛ and the daytime running light screw (A) is in position ○.

For additional information on the daytime running lights, see page 24.

Turn signals

- 1 **Lane change position.** In maneuvers such as lane changing, the driver can flash the turn signals by moving the turn signal lever to the first stop and holding it there. The lever will return to the neutral position when released.
- 2 **Signal lever engaged for normal turns.**
- 3 **High beam/low beam switch (headlights on).**
Headlight flasher (headlights off).
Move the lever towards the steering wheel. The headlight high beam will be on until the lever is released.

NOTE: A defective turn signal bulb will cause the turn signal indicator and remaining signal lights to flash more rapidly than normal.



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Page 158 License Lamp Assembly

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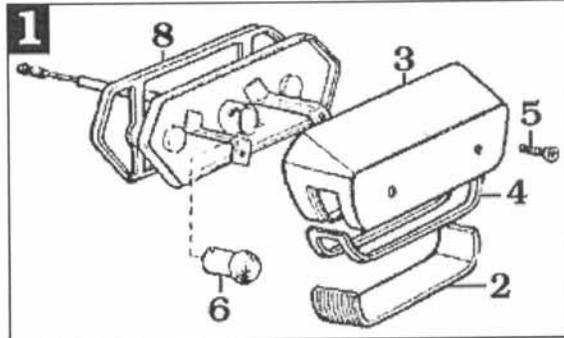
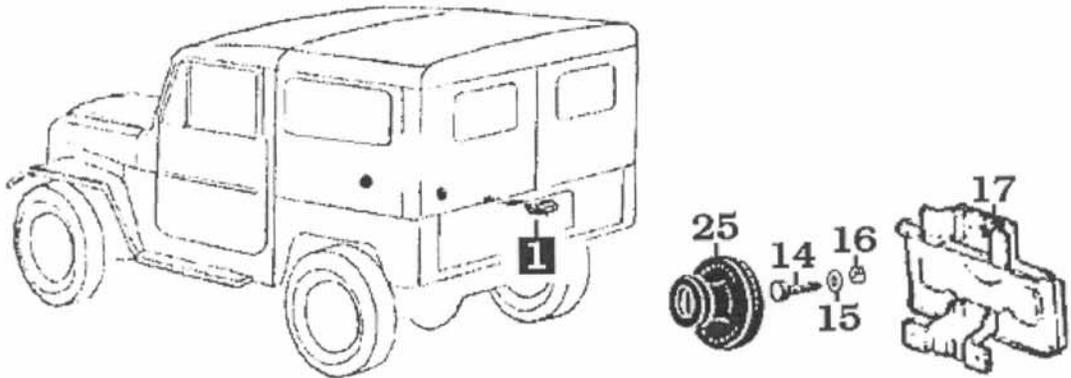
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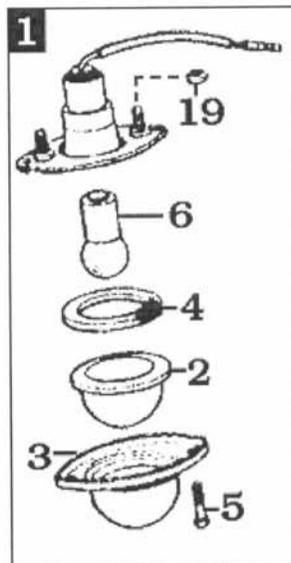
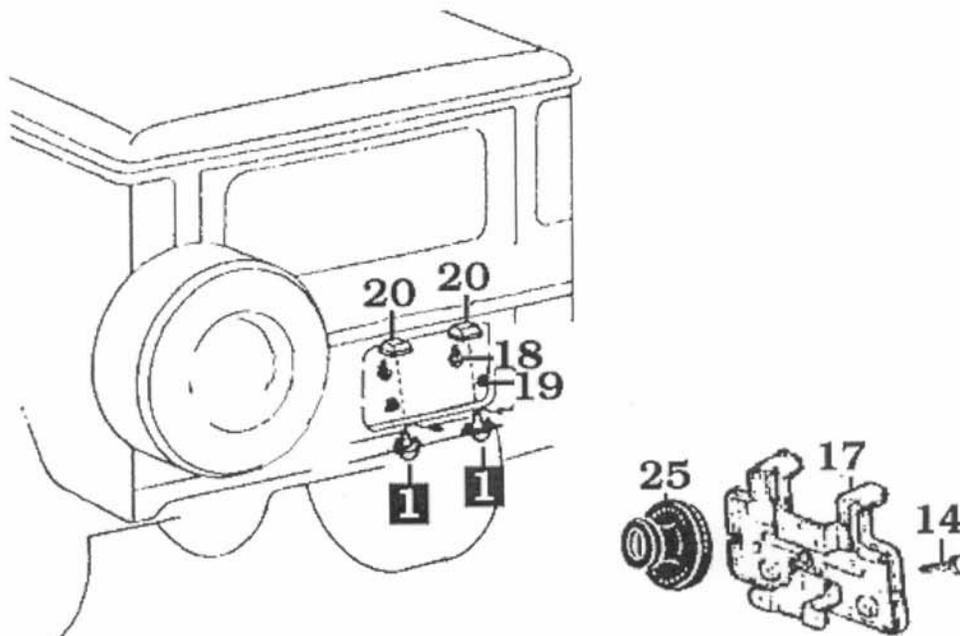
1958-2/74 40 Series

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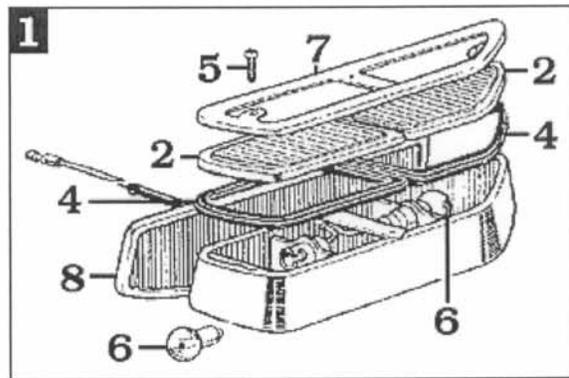
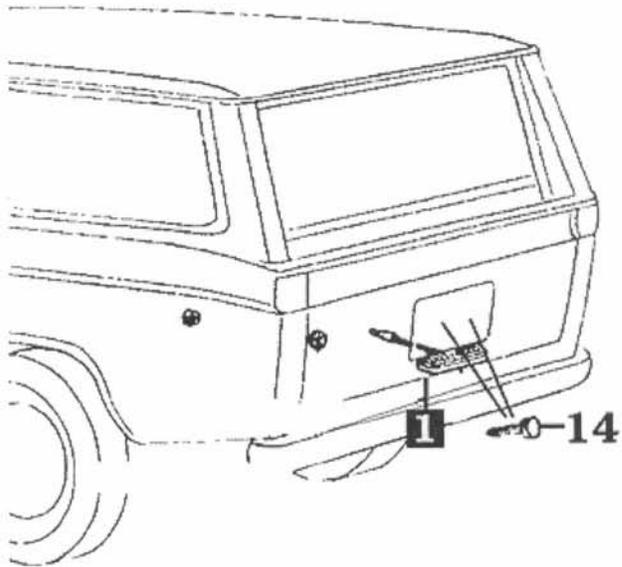
2/74-1984 40 Series

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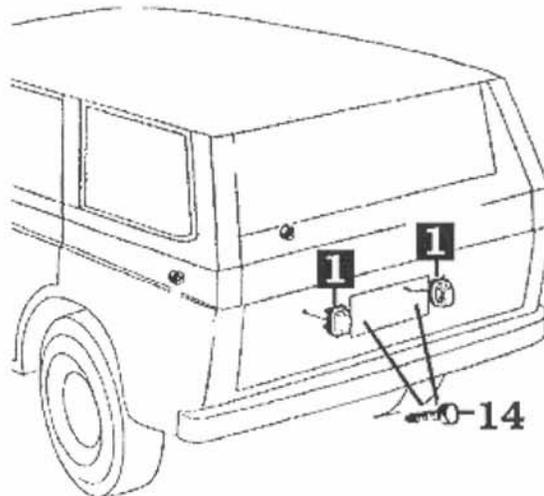
1968-9/72 55 Series

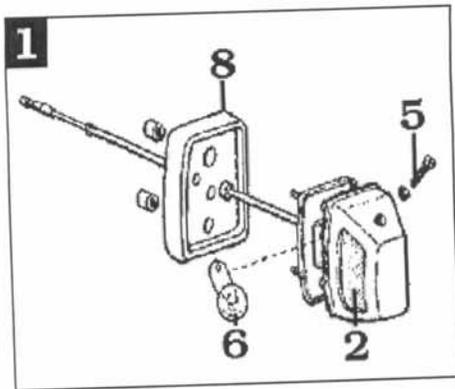
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9/72-7/80 55 Series

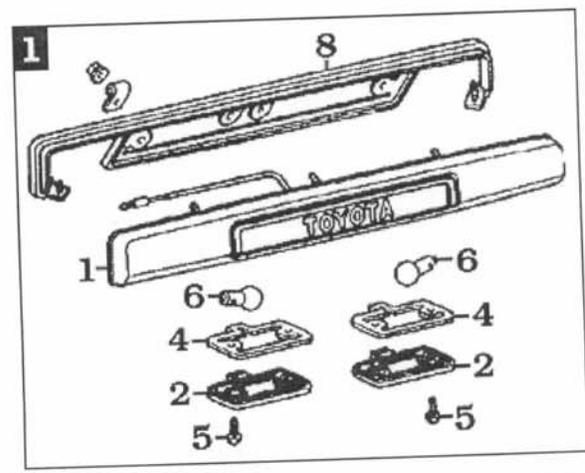
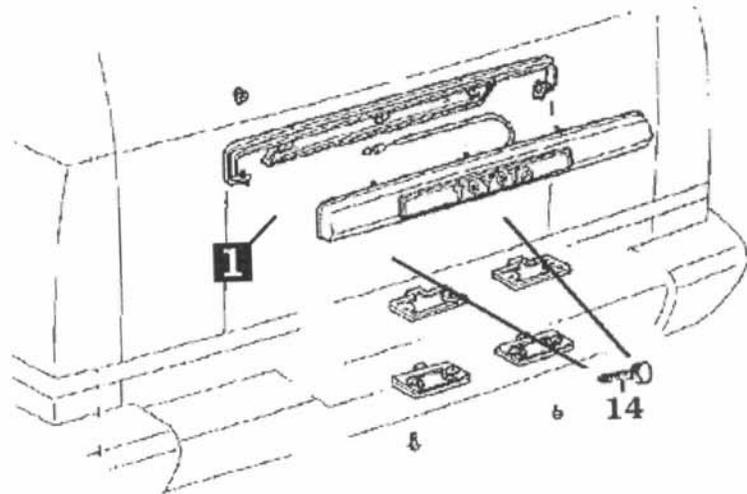
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8/80-1/90 60 & 62 Series

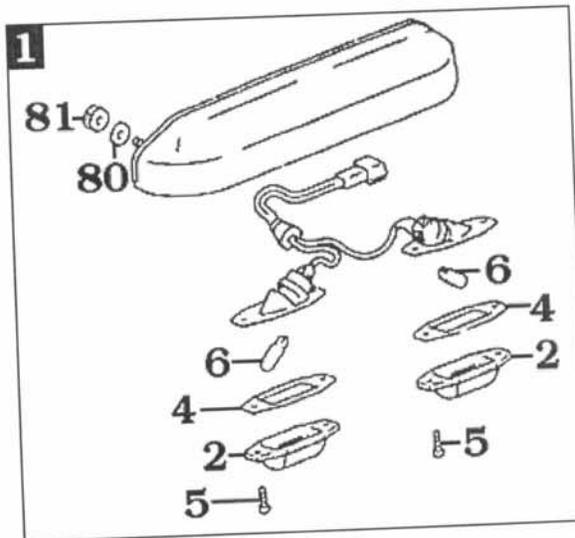
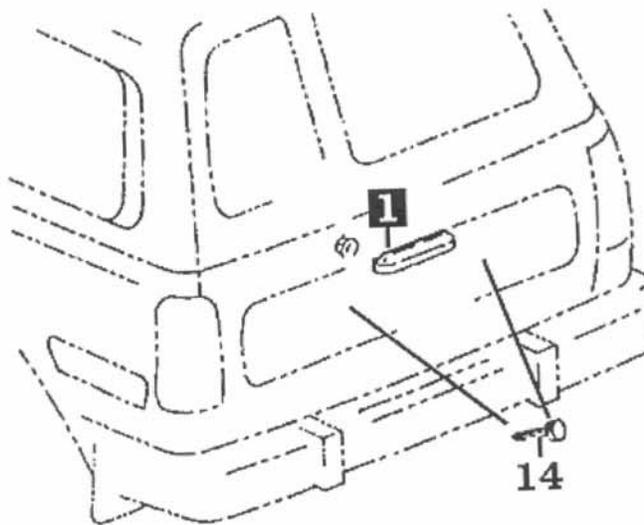
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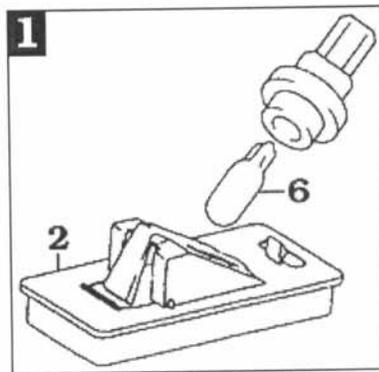
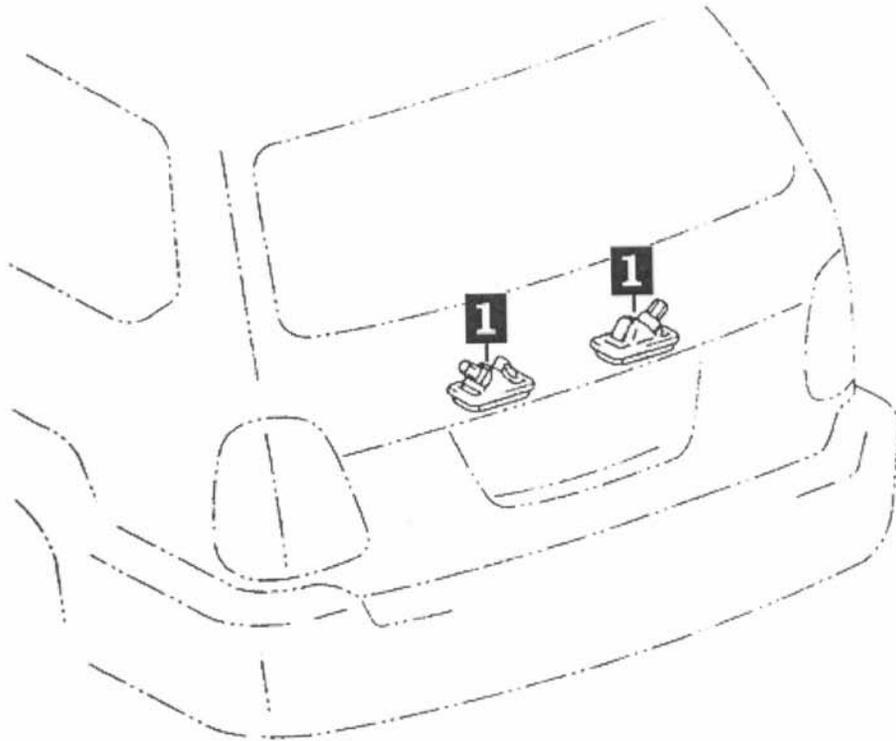
1/90-1/98 80 Series



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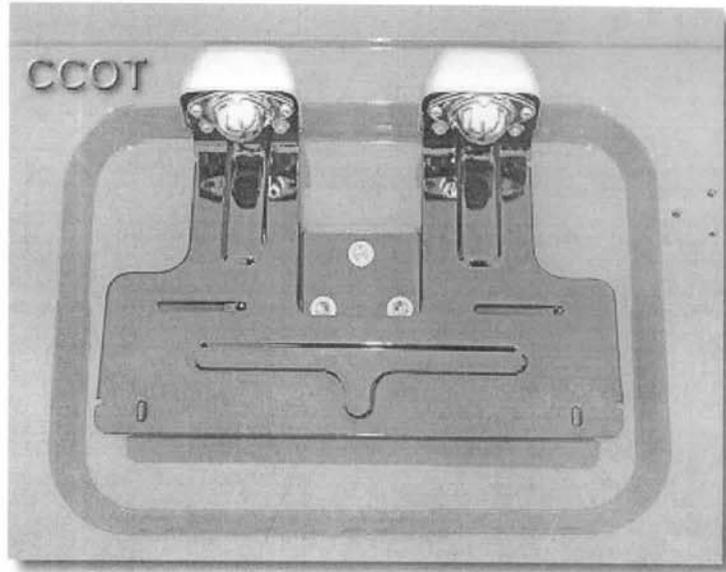
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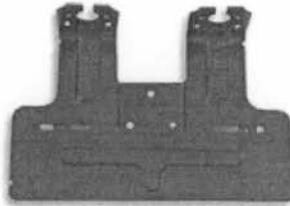
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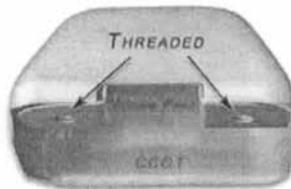
Toyota License Plate Bracket & Lights



License Plate Holder - Rear - 1/75-84 - TOYOTA

- License Plate Bracket / Holder will have scratches in finish. We've talked with Toyota about this but they still will not properly package product. Expect scratches on this part wherever you may purchase. Spray painting MAY be required. No returns on this part.

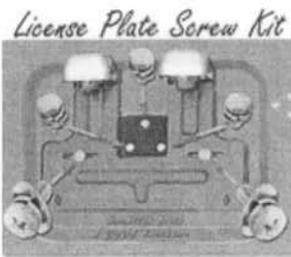
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License Plate Rear Dome Light Cover - 1/75-84 - TOYOTA

- Toyota License Plate Light Cover
- Fits: 1/75 to '84 - 40 Series
- Not "Handed" ~ Fits Right or Left Side
- Sold Individually

91690-80300 **\$26.95** [Add to Cart](#)



License Plate Screw Kit

License Plate - Rear - Screw Kit - Stainless

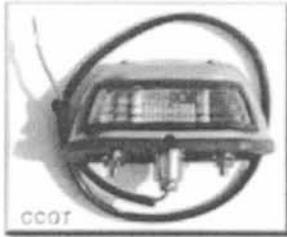
- Fits Rear License Plate Frame 1/75 to 10/84
- Stainless Steel (SST) Kit Includes
- 5 each - Hex Head Bolts - SST
- 3 each - Flat Washers - SST
- 2 each - Flat Fender Washers - SST

License-Plate-Screws **\$7.81** [Add to Cart](#)



License Plate Light

- Fits 2/74-7/80
- [Click for Light Page](#)



- License Plate Light**
- Fits: 3/69-2/74
 - [Click for Light Page](#)



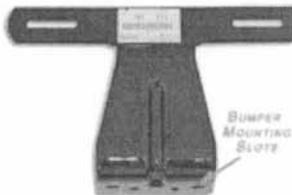
- Spare Tire Rack Bumper, 1ea.**
- Click Photo to Enlarge
 - Fits FJ40 Tire Rack 8/76 & Older
 - Great Replacement Bumper
 - Also, great hood bumper for FJ60 or FJ62
 - Complete with Bumper, Bolt & Lock Nut
 - CCOT's Minimum Order Size is \$20

A59382-60010 **\$8.61**



License Plate Holder

Front Bracket



License Plate Bracket, Front

FJ40/45/55



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