

04-16-2002



OMB No. 0651-0011 (exp. 4/94)

03-29-2002

102058503

U.S. Patent & TMOfo/TM Mail Rpt. Dt. #40

To the Honorable Commissioner of Patents and Trademarks: Please record t

copy thereof.

1. Name of conveying party(ies):

**FOREVER 21, INC, (a Delaware corporation) &
DC& PH International, Inc. (a California corporation) &
FOREVER 21 Logistics, LLC (a Delaware LLC)
2001 South Alameda St.
Los Angeles, CA 90058**

Additional name(s) of conveying party(ies) attached? ☐ Yes ☒ No

3. Nature of conveyance:

☐ Assignment

☐ Merger

☒ Security Agreement

☐ Change of Name

☐ Other

Execution Date: **March 4, 2002**

2. Name and address of receiving party(ies)

Name: **WELLS FARGO RETAIL FINANCE
LLC**

Internal Address:

Street Address: **One Boston Place, 18th Floor**

City: **Boston** State: **MA** ZIP: **02108**

Additional name(s) & address(es) attached? ☐ Yes ☒ No

4. Application number(s) or Trademark number(s):

If this document is being filed together with a new application, the execution date of the application is:

A. Trademark Application No.(s)

FOREVER XXI (Serial No. 76-196,459)

FOREVER XXI (Serial No. 76-196,458)

Additional numbers attached? ☒ Yes ☐ No

B. Trademark No.(s)

FOREVER 21 (Registration No. 2,067,637).

5. Name and address of party to whom correspondence concerning document should be mailed:

Mr. Michael Wright, Paralegal

Name: **Buchalter, Nemer, Fields &
Younger**

Internal Address:

Street Address: **601 So. Figueroa St., Ste.
2400**

City: **Los Angeles** State: **California** ZIP: **90017**

6. Total number of applications and patents involved:

7. Total fee (37 CFR 3.41)\$ **165.00**

☐ Enclosed

☒ Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of *my knowledge and belief*, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Michael Wright

Name of Person Signing

Signature

March 28, 2002

Date

Total number of pages including cover sheet, attachments, and document: **12**

04/16/2002 DBYRNE 00000033 200052 76196459

01 FC:481
02 FC:482

40.00 CH
125.00 CH

Mail documents to be recorded with required cover sheet information to:

Commissioner of Patents & Trademarks, Box Assignments

Washington D.C. 20231

0016SSH.FRM

TRADEMARK
REEL: 002483 FRAME: 0532

Exhibit "A"

REGISTERED TRADEMARKS AND SERVICE MARKS

<u>Trademark or Service Mark</u>	<u>Registration Date</u>	<u>Registration No.</u>
FOREVER 21	06/03/97	2,067,637

PENDING TRADEMARKS AND SERVICE MARKS

<u>Trademark or Service Mark</u>	<u>Filing Date</u>	<u>Serial No.</u>
FOREVER XXI, INC.	06/20/01	1107,176 (Application No.)
FOREVER 21	03/13/00	1050,844 (Application No.)
FOREVER XXI	01/19/01	76-196,459
FOREVER XXI	01/19/01	76-196,458
FOREVER 21	07/07/00	76-085,191

**AMENDED AND RESTATED
INTELLECTUAL PROPERTY SECURITY AGREEMENT**

This AMENDED AND RESTATED INTELLECTUAL PROPERTY SECURITY AGREEMENT ("Agreement"), dated as of March 4, 2002 is entered into by and among FOREVER 21, INC., a Delaware corporation ("Parent"), DC & PH INTERNATIONAL, INC., a California corporation ("DC & PH") and FOREVER 21 LOGISTICS, LLC, a Delaware limited liability company ("Logistics", and together with Parent and DC & PH, the "Debtors") and WELLS FARGO RETAIL FINANCE LLC, a Delaware limited liability company ("Lender") in light of the following:

R E C I T A L S

A. Pursuant to a Restructuring, Debtors and Lender are, contemporaneously herewith, entering into that certain Amended and Restated Loan and Security Agreement ("Loan Agreement") and other instruments, documents and agreements contemplated thereby or related thereto (collectively, together with the Loan Agreement, the "Loan Documents");

B. Debtors are the owners of certain intellectual property, identified below, in which each Debtor is granting a security interest to Lender; and

C. Pursuant to Section 4.10 of the Loan Agreement, Debtors and Lender are entering into this Agreement and each hereby agrees to amend and restate, and supersede in its entirety, that certain Intellectual Property Security Agreement, dated as of November 28, 2001 with this Agreement.

A G R E E M E N T

NOW THEREFORE, in consideration of the mutual promises, covenants, conditions, representations, and warranties hereinafter set forth and for other good and valuable consideration, the parties hereto mutually agree as follows:

1. DEFINITIONS AND CONSTRUCTION.

1.1 Definitions. The following terms, as used in this Agreement, have the following meanings:

"Code" means the California Commercial Code, as amended and supplemented from time to time, and any successor statute.

"Collateral" means:

(i) Each of the trademarks and rights and interest which are capable of being protected as trademarks (including trademarks, service marks, designs, logos, indicia, tradenames, corporate names, company names, business names, fictitious business names, trade styles, and

other source or business identifiers, and applications pertaining thereto), which are presently, or in the future may be, owned, created, acquired, or used (whether pursuant to a license or otherwise) by Debtor, in whole or in part, and all trademark rights with respect thereto throughout the world, including all proceeds thereof (including license royalties and proceeds of infringement suits), and rights to renew and extend such trademarks and trademark rights;

(ii) Each of the patents and patent applications which are presently, or in the future may be, owned, issued, acquired, or used (whether pursuant to a license or otherwise) by Debtor, in whole or in part, and all patent rights with respect thereto throughout the world, including all proceeds thereof (including license royalties and proceeds of infringement suits), foreign filing rights, and rights to extend such patents and patent rights;

(iii) All of each Debtor's right to the trademarks and trademark registrations listed on Schedule A, attached hereto, as the same may be updated hereafter from time to time;

(iv) All of each Debtor's right, title, and interest, in and to the patents and patent applications listed on Schedule B, attached hereto, as the same may be updated hereafter from time to time;

(v) All of each Debtor's right, title and interest to register trademark claims under any state or federal trademark law or regulation of any foreign country and to apply for, renew, and extend the trademark registrations and trademark rights, the right (without obligation) to sue or bring opposition or cancellation proceedings in the name of such Debtor or in the name of Lender for past, present, and future infringements of the trademarks, registrations, or trademark rights and all rights (but not obligations) corresponding thereto in the United States and any foreign country, and the associated goodwill;

(vi) All of each Debtor's right, title, and interest in all patentable inventions, and to file applications for patent under federal patent law or regulation of any foreign country, and to request reexamination and/or reissue of the patents, the right (without obligation) to sue or bring interference proceedings in the name of such Debtor or in the name of Lender for past, present, and future infringements of the patents, and all rights (but not obligations) corresponding thereto in the United States and any foreign country;

(vii) All general intangibles relating to the foregoing; and

(viii) All proceeds of any and all of the foregoing (including, without limitation, license royalties and proceeds of infringement suits) and, to the extent not otherwise included, all payments under insurance, or any indemnity, warranty, or guaranty payable by reason of loss or damage to or otherwise with respect to the Collateral.

"Obligations" means all obligations, liabilities, and indebtedness of any Debtor to Lender, whether direct, indirect, liquidated, or contingent, and whether arising under this Agreement, the Loan Agreement, any other of the Loan Documents, or otherwise, including all costs and expenses.

1.2 Construction. Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, and the term "including" is not limiting. The words "hereof," "herein," "hereby," "hereunder," and other similar terms refer to this Agreement as a whole and not to any particular provision of this Agreement. Any initially capitalized terms used but not defined herein shall have the meaning set forth in the Loan Agreement. Any reference herein to any of the Loan Documents includes any and all alterations, amendments, extensions, modifications, renewals, or supplements thereto or thereof, as applicable. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved against Lender or Debtors, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by Debtors, Lender, and their respective counsel, and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of Lender and Debtors.

2. GRANT OF SECURITY INTEREST.

Each Debtor hereby grants to Lender a first-priority security interest in all of each Debtor's right, title, and interest in and to the Collateral to secure the Obligations.

3. REPRESENTATIONS, WARRANTIES AND COVENANTS.

Each Debtor hereby represents, warrants, and covenants that:

3.1 Trademarks; Service Marks; Patents.

(i) A true and complete schedule setting forth all federal and state trademark and service mark registrations owned or controlled by each Debtor or licensed to each Debtor, together with a summary description and full information in respect of the filing or issuance thereof and expiration dates is set forth on Schedule A;

(ii) A true and complete schedule setting forth all patent and patent applications owned or controlled by each Debtor or licensed to each Debtor, together with a summary description and full information in respect of the filing or issuance thereof and expiration dates is set forth on Schedule B;

3.2 Validity; Enforceability. Each of the patents, service marks and trademarks is valid and enforceable, and each Debtor is not presently aware of any past, present, or prospective claim by any third party that any of the patents, service marks or trademarks are invalid or unenforceable, or that the use of any patents, service marks or trademarks violates the rights of any third person, or of any basis for any such claims;

3.3 Title. Each Debtor is the sole and exclusive owner of the entire and unencumbered right, title, and interest in and to each of the patents, patent applications, service marks, service mark registrations, trademarks, and trademark registrations, free and clear of any liens, charges, and encumbrances, including pledges, assignments, licenses, shop rights, and covenants by any Debtor not to sue third persons;

3.4 Notice. Each Debtor has used and will continue to use proper statutory notice in connection with its use of each of the patents, service marks and trademarks;

3.5 Quality. Each Debtor has used and will continue to use consistent standards of high quality (which may be consistent with such Debtor's past practices) in the manufacture, sale, and delivery of products and services sold or delivered under or in connection with the service marks and trademarks, including, to the extent applicable, in the operation and maintenance of its merchandising operations, and will continue to maintain the validity of the service marks and trademarks;

3.6 Perfection of Security Interest. Except for the filing of a financing statement with the Secretaries of State of California and Delaware and filings with the United States Patent and Trademark Office necessary to perfect the security interests created hereunder, no authorization, approval, or other action by, and no notice to or filing with, any governmental authority or regulatory body is required either for the grant by each Debtor of the security interest hereunder or for the execution, delivery, or performance of this Agreement by each Debtor or for the perfection of or the exercise by Lender of its rights hereunder to the Collateral in the United States.

4. AFTER-ACQUIRED PATENT, SERVICE MARK OR TRADEMARK RIGHTS.

If any Debtor shall obtain rights to any new service marks, trademarks, any new patentable inventions or become entitled to the benefit of any patent application or patent for any reissue, division, or continuation, of any patent, the provisions of this Agreement shall automatically apply thereto. Each Debtor shall give prompt notice in writing to Lender with respect to any such new service marks, trademarks or patents, or renewal or extension of any service mark or trademark registration. Each Debtor shall bear any expenses incurred in connection with future patent applications or service mark or trademark registrations.

5. LITIGATION AND PROCEEDINGS.

Each Debtor shall commence and diligently prosecute in its own name, as the real party in interest, for its own benefit, and its own expense, such suits, administrative proceedings, or other action for infringement or other damages as are in its reasonable business judgment necessary to protect the Collateral. Each Debtor shall provide to Lender any information with respect thereto requested by Lender. Lender shall provide at Debtor's expense all necessary cooperation in connection with any such suits, proceedings, or action, including, without limitation, joining as a necessary party. Following any Debtor's becoming aware thereof, Debtors shall notify Lender of the institution of, or any adverse determination in, any proceeding in the United States Patent and Trademark Office, or any United States, state, or foreign court regarding any Debtor's claim of ownership in any of the patents, service marks or trademarks, its right to apply for the same, or its right to keep and maintain such patent, service mark or trademark rights.

6. POWER OF ATTORNEY.

Each Debtor grants Lender power of attorney, having the full authority, and in the place of such Debtor and in the name of such Debtor, from time to time following an Event of Default in Lender's discretion, to take any action and to execute any instrument which Lender may deem necessary or advisable

to accomplish the purposes of this Agreement, including, without limitation, as may be subject to the provisions of this Agreement: to endorse each Debtor's name on all applications, documents, papers, and instruments necessary for Lender to use or maintain the Collateral; to ask, demand, collect, sue for, recover, impound, receive, and give acquittance and receipts for money due or to become due under or in respect of any of the Collateral; to file any claims or take any action or institute any proceedings that Lender may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce Lender's rights with respect to any of the Collateral and to assign, pledge, convey, or otherwise transfer title in or dispose of the Collateral to any person.

7. RIGHT TO INSPECT.

Each Debtor grants to Lender and its employees and agents the right to visit such Debtor's plants and facilities which manufacture, inspect, or store products sold under any of the patents or trademarks, and to inspect the products and quality control records relating thereto at reasonable times during regular business hours.

8. EVENTS OF DEFAULT.

Any of the following events shall be an Event of Default:

8.1 Loan Agreement. An Event of Default shall occur as defined in the Loan Agreement;

8.2 Misrepresentation. Any representation or warranty made herein by any Debtor or in any document furnished to Lender by any Debtor under this Agreement is incorrect in any material respect when made or when reaffirmed; and

8.3 Breach. Any Debtor fails to observe or perform any covenant, condition, or agreement to be observed or performed pursuant to the terms hereof which materially and adversely affects Lender.

9. SPECIFIC REMEDIES.

Upon the occurrence of any Event of Default, Lender shall have, in addition to, other rights given by law or in this Agreement, the Loan Agreement, or in any other Loan Document, all of the rights and remedies with respect to the Collateral of a secured party under the Code, including the following:

9.1 Notification. Lender may notify licensees to make royalty payments on license agreements directly to Lender;

9.2 Sale. Lender may sell or assign the Collateral and associated goodwill at public or private sale for such amounts, and at such time or times as Lender deems advisable. Any requirement of reasonable notice of any disposition of the Collateral shall be satisfied if such notice is sent to any Debtor five days prior to such disposition. Such Debtor shall be credited with the net proceeds of such sale only when they are actually received by Lender, and such Debtor shall continue to be liable for any deficiency

remaining after the Collateral is sold or collected. If the sale is to be a public sale, Lender shall also give notice of the time and place by publishing a notice one time at least five days before the date of the sale in a newspaper of general circulation in the county in which the sale is to be held. To the maximum extent permitted by applicable law, Lender may be the purchaser of any or all of the Collateral and associated goodwill at any public sale and shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any public sale, to use and apply all or any part of the Obligations as a credit on account of the purchase price of any collateral payable by Lender at such sale.

10. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER.

THE VALIDITY OF THIS AGREEMENT, ITS CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT, AND THE RIGHTS OF THE PARTIES HERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR RELATED HERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS, WITHOUT GIVING EFFECT TO ITS CONFLICT OF LAWS PRINCIPLES. THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT SHALL BE TRIED AND LITIGATED IN THE SUPERIOR COURT OF MIDDLESEX COUNTY, COMMONWEALTH OF MASSACHUSETTS OR THE UNITED STATES DISTRICT COURT, DISTRICT OF MASSACHUSETTS SITTING IN BOSTON, MASSACHUSETTS OR, AT THE SOLE OPTION OF LENDER, IN ANY OTHER COURT IN WHICH LENDER SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. EACH DEBTOR AND LENDER WAIVES, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 10.

EACH DEBTOR AND LENDER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. EACH DEBTOR AND LENDER REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

11. GENERAL PROVISIONS.

11.1 Effectiveness. This Agreement shall be binding and deemed effective when executed by each Debtor and Lender.

11.2 Successors and Assigns. This Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties; provided, however, that each Debtor may not assign this Agreement or any rights or duties hereunder without Lender's prior written consent and any prohibited assignment shall be absolutely void. Lender may assign this Agreement and its rights and duties hereunder and no consent or approval by any Debtor is required in connection with any such assignment.

11.3 Section Headings. Headings and numbers have been set forth herein for convenience only. Unless the contrary is compelled by the context, everything contained in each section applies equally to this entire Agreement.

11.4 Interpretation. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved against Lender or any Debtor, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties hereto.

11.5 Severability of Provisions. Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

11.6 Amendments in Writing. This Agreement can only be amended by a writing signed by both Lender and each Debtor.

11.7 Counterparts; Telefacsimile Execution. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by telefacsimile shall be equally as effective as delivery of a manually executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile also shall deliver a manually executed counterpart of this Agreement but the failure to deliver a manually executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement.

11.8 Fees and Expenses. Each Debtor shall pay to Lender on demand all costs and expenses that Lender pays or incurs in connection with the negotiation, preparation, consummation, administration, enforcement, and termination of this Agreement, including: (a) reasonable attorneys' and paralegals' fees and disbursements of counsel to Lender; (b) costs and expenses (including reasonable attorneys' and paralegals' fees and disbursements) for any amendment, supplement, waiver, consent, or subsequent closing in connection with this Agreement and the transactions contemplated hereby; (c) costs and expenses of lien and title searches; (d) taxes, fees, and other charges for filing this Agreement at the United States Patent and Trademark Office, or for filing financing statements, and continuations, and other actions to perfect, protect, and continue the security interest created hereunder; (e) sums paid or incurred to pay any amount or take any action required of any Debtor under this Agreement that any Debtor fails to pay or take; (f) costs and expenses of preserving and protecting the Collateral; and (g) costs and

expenses (including reasonable attorneys' and paralegals' fees and disbursements) paid or incurred to enforce the security interest created hereunder, sell or otherwise realize upon the Collateral, and otherwise enforce the provisions of this Agreement, or to defend any claims made or threatened against Lender arising out of the transactions contemplated hereby (including preparations for the consultations concerning any such matters). The foregoing shall not be construed to limit any other provisions of this Agreement or the Loan Documents regarding costs and expenses to be paid by any Debtor. The parties agree that reasonable attorneys' and paralegals' fees and costs incurred in enforcing any judgment are recoverable as a separate item in addition to fees and costs incurred in obtaining the judgment and that the recovery of such attorneys' and paralegals' fees and costs is intended to survive any judgment, and is not to be deemed merged into any judgment.

11.9 Notices. Except as otherwise provided herein, all notices, demands, and requests that either party is required or elects to give to the other shall be in writing and shall be governed by the provisions of Article 12 of the Loan Agreement.

11.10 Termination By Lender. After termination of the Loan Agreement and when Lender has received payment and performance, in full, of all Obligations, Lender shall execute and deliver to Debtor a termination of all of the security interests granted by each Debtor hereunder.

11.11 Integration. This Agreement, together with the other Loan Documents, reflect the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof.

* * * * *

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

WELLS FARGO RETAIL FINANCE LLC,
a Delaware limited liability company

By: Kathy A. Mahoney
Name: Kathy A. Mahoney
Title: Vice President

FOREVER 21, INC.,
a Delaware corporation

By: _____
Name: _____
Title: _____

DC & PH INTERNATIONAL, INC.,
a California corporation

By: _____
Name: _____
Title: _____

FOREVER 21 LOGISTICS, LLC,
a Delaware limited liability company

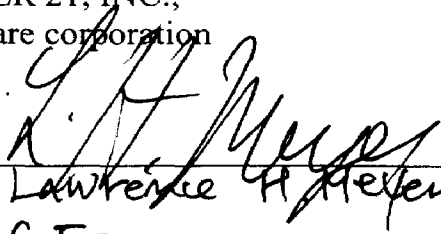
By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

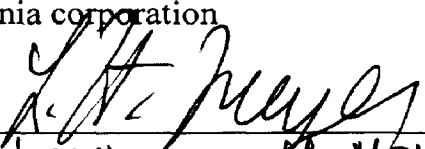
WELLS FARGO RETAIL FINANCE LLC,
a Delaware limited liability company

By: _____
Name:
Title:

FOREVER 21, INC.,
a Delaware corporation

By: 
Name: Lawrence H. Meyer
Title: CFO

DC & PH INTERNATIONAL, INC.,
a California corporation

By: 
Name: Lawrence H. Meyer
Title: CFO

FOREVER 21 LOGISTICS, LLC,
a Delaware limited liability company


By: 
Name: Lawrence H. Meyer
Title: CFO

Exhibit "A"

REGISTERED TRADEMARKS AND SERVICE MARKS

<u>Trademark or Service Mark</u>	<u>Registration Date</u>	<u>Registration No.</u>
FOREVER 21	06/03/97	2,067,637

PENDING TRADEMARKS AND SERVICE MARKS

<u>Trademark or Service Mark</u>	<u>Filing Date</u>	<u>Serial No.</u>
FOREVER XXI, INC.	06/20/01	1107,176 (Application No.)
FOREVER 21	03/13/00	1050,844 (Application No.)
FOREVER XXI	01/19/01	76-196,459
FOREVER XXI	01/19/01	76-196,458
FOREVER 21	07/07/00	76-085,191

Exhibit "B"

PATENTS

<u>Patent Description/Title</u>	<u>Issue Date</u>	<u>Patent No.</u>	<u>Name of Inventor</u>
<u>N/A</u>			

PATENT APPLICATIONS

<u>Description</u>	<u>Filing Date</u>	<u>Serial No.</u>	<u>Name of Inventor</u>
<u>N/A</u>			