Instructions:

1. These questions will be graded on the basis of the times indicated with each question. The indicated time for the questions total 3 hours. You will be given 3 hours to write the examination. Budget your time carefully or you may not finish.

2. Be sure to state a result whenever a question asks for one. Merely stating the arguments on both sides of a legal issue will result in only partial credit because you will not have completed the analysis required by that type of question.

3. If you find it necessary to make factual assumptions in order to answer a question, be sure to state the assumption.

4. Do not assume additional facts for the purpose of avoiding a legal issue or making its resolution easier.

5. Comment briefly on each legal issue reasonably raised by the questions and on each reason for your answer, even when you decide that one legal issue or reason controls the result.

6. The difference between triumph and disaster may lie in a careful reading of the questions.
Sam "Thin" Jones, the world renowned jazz saxaphonist, performed at Preservation Hall in New Orleans. He played his new impromptu work, "The Soulful Streetsweeper". He had never written down the composition and played it from memory.

A.

"Junior" Thompson heard Jones play the work at Preservation Hall. He, too, was a jazz saxaphonist. Since he had a photographic memory for music, he was able to play Jones's composition perfectly after he had heard it three times that night. Thompson added "The Soulful Streetsweeper" to his repertoire. He first played it in St. Louis. Jones quickly learned that Thompson was playing his composition there.

Jones wishes to sue Thompson for copyright infringement. Does Jones have a cause of action? What is the proper court to hear the suit? Are there any prerequisites to bring suit? Discuss all relevant legal issues. State a result.

B.

Change the facts in A. Assume that Jones had handwritten his composition "The Soulful Streetsweeper" on blank music paper and had played it from the sheet music at Preservation Hall. Answer the same questions in A in light of this changed fact.

END OF QUESTION I.
In the early 1970's, Dennis Moore developed a submersible boat trailer tail light. He began to manufacture and sell them in May 1974 under the trade name "Dry Launch". It was based on the Bloodgood '349 patent, issued in 1963, rights in which he had purchased in November 1973. The Bloodgood '349 patent had been issued after the patent examiner could find no prior art reference describing open-bottomed submersible light fixtures. The only prior art tail lights for boat trailers were fully sealed.

The tail light fixture consists of a hood-shaped, impervious housing with a light bulb and socket positioned in the upper end. The lower end of the housing is open. [See diagram at end of question.] When the trailer is backed into the water in order to launch the boat, water rises within the lower end of the housing and compresses the air trapped in the impervious upper end. [This same physical principle operates when an upside-down water glass is lowered into water; air is trapped inside.] This air pressure prevents water from coming into contact with the bulb and socket, thus preventing popping of the hot bulb upon contact with the cool water. Also, electrical short circuits within the socket are avoided, particularly when the trailer is backed into seawater. [Saline water is electrically conductive; dirty fresh water is an imperfect insulator.] The equalization of interior and external pressures caused by the open bottom arrangement eliminates the need to make the tail light fixture strong enough to withstand pressure differences. When the boat trailer is pulled out of the water, the water drains out from the open lower end, preventing corrosion of the components; the interior of the housing quickly dries out.
Claim 1 of the Bloodgood '349 patent reads in part:

1. A lamp structure for a boat hauling trailer consisting of,
   an impervious hood shaped housing having spaced walls,
   
   lower portions of said walls having substantially vertical inner surfaces and providing an open lower end for the housing,
   
   said housing and said lens being impervious above said open lower end through which water may enter when the housing is immersed in water whereby air trapped within the housing develops pressure restricting the water to the lower portion of the housing, and said inner surfaces of the walls facilitating drainage of water from the housing.

Experience demonstrated one problem with the "Dry Launch" tail light. Because of its open bottom, mud and road dirt thrown into the air by tires while the trailer was in motion tended to collect inside the tail light. That required period cleaning of the interior of the housing.

When the "Dry Launch" [Bloodgood] boat trailer tail light came on the market, Wesbar (rival boat trailer component manufacturer) decided to manufacture a competing submersible boat trailer tail light. On the advise of its attorney, Wesbar designed Model PX-61. It has an impervious rectilinear upper housing which entraps air; a light bulb and socket are mounted in the upper end of the housing. The lower end is enclosed by a clear plastic plate, but small openings are provided at each end of the bottom to permit water to drain from the housing. Wesbar proceeded to produce and market this submersible boat trailer tail light in June 1977. In practice, the Wesbar light suffered corrosion problems caused by humidity resulting from evaporation of droplets of water left inside the housing after drainage; the small openings did not provide enough air circulation to remove the humid air inside the housing.

On September 28, 1978, Moore sued Wesbar for infringement of the Bloodgood '349 patent. Although Wesbar could not cite any
prior art patents, it argued that Bloodgood '349 was invalid in light of diving bell technology known in the literature since the time of Aristotle [the principle of the upside-down water glass]. Wesbar also argued that its submersible tail light did not infringe Bloodgood '349 because of its distinguishable features. In addition, it argued that the Bloodgood '349 patent was too trivial to merit patenting. Wesbar also argued that the component designers in the boat trailer industry were self-taught, rather than graduates of engineering schools.

Should the court rule that the Bloodgood '349 patent is valid or invalid? Should the court rule that the patent was infringed by the Wesbar trailer light? Discuss all legal issues. State a result.

END OF TEXT OF QUESTION II.
A: clear plastic plate
B: openings

END OF QUESTION II.
From September 1977 to June 1979, Eloise Toby was employed by the Columbia School District as a teacher of home economics. Shortly after leaving her teaching position with the District, she wrote a booklet entitled "Cake Decorating Made Easy". It consisted of 35 pages, of which 29 were her original creation. The remaining 6 pages consisted of material incorporated with the permission of the authors, who were given appropriate credit.

Toby placed the following notice at the bottom of the title page of her booklet:

Copyright 1980 Eloise Toby.

One hundred twenty-five (125) copies of the booklet were printed in the spring of 1980. Toby sold all but 6 of the copies for $2.00 each to the students in the adult education cake decorating classes which she taught. Her profit was $1.00 per copy. No copies were distributed to or sold by a bookstore or other retail outlet. She never authorized anyone to copy or reproduce her booklet or any part of it.

Shirley Granger teaches food service career classes in the Columbia School District. In the spring of 1980, she enrolled in one of Toby's cake decorating classes and purchased a copy of Toby's booklet. During the following summer, Granger prepared a booklet entitled "Cake Decorating Learning Activity Package" for use in her food service career classes. It consisted of 24 pages and was designed to be used by students who wished to study an optional section of her course devoted to cake decorating. Granger had 15 copies of her booklet made and put them in a file so that they would be available to her students. She used it during the 1980, 1981 and 1982 school years. Sixty or Granger's 225 students elected to study cake decorating and used her
booklet. Neither Granger nor the Columbia School District derived any profit from Granger's booklet.

Granger copied from Toby's booklet the supply list, and the lists of ingredients for each icing recipe. She paraphrased the directions in those icing recipes. She also paraphrased 3 sheets dealing with color flow and mixing colors and 2 pages explaining how to make flowers and sugar molds. Twenty-eight pages of Toby's booklet were not included in Granger's booklet (comprising a table of contents, 2 pages on the technique of icing a cake, an explanation of how to make leaves, 6 pages of lettering designs, and 8 pages of seasonal designs). Granger did not give Toby credit for the 5 pages or the lists of ingredients and directions in the icing recipes, nor did she acknowledge the existence of Toby's booklet or that she asserted a copyright with respect to the copied pages and material.

Toby learned of Granger's booklet in the summer of 1982 when a student in Toby's adult education class refused to purchase her booklet. The student's son had obtained a copy of the Granger booklet from Granger's class. After examining it, the student accused Toby of plagiarizing Granger's work.

Toby brought an action against Granger and the Columbia School District for infringement in federal court. Granger defended on the grounds that the federal court did not have jurisdiction, that the copyright was invalid, and that she was entitled to copy and paraphrase the material she did. How should the court rule on those defenses? Discuss all relevant legal issues. State a result.

END OF QUESTION III.
In 1971, Aldo Levin founded ALAS, Inc. [acronym for Aldo Levin Audio Systems] in Hartford, Connecticut, to produce "high-end" audio equipment to his own design. He marketed that audio equipment under the trademark "ALAS". The "ALAS" trademark was registered under the Lanham Act, but not under any state trademark acts. Levin's name was not part of the registered trademark. However, the audio product line also was identified with a silver label marked "Aldo Levin line". That label was not registered under wither the Lanham Act or state trademark acts. In addition, Levin was identified as the designer and owner in the advertising and in the literature accompanying the products.

Though Levin's designs were of high quality, ALAS was in serious financial trouble by 1980. Levin then asked Charles Sanford, a retired executive in the audio industry, to invest in ALAS and to aid in the management of the company. This Sanford did, investing $500,000 in the company and persuading several others to invest another $300,000.

At Sanford's request, Levin entered into an "Employment Agreement" in December 1980, under which Levin agreed to work exclusively for ALAS as a developer of audio equipment in exchange for an annual salary of $25,000. He also agreed that, should he leave ALAS's employ, he would not engage in the audio business "anywhere in the world" until December 31, 1988. Finally, the Agreement stated that if Levin "ceased to be employed by ALAS" he would "not thereafter use or permit the use of the name 'Aldo Levin', 'Aldo Levin Audio', or any other name including 'Aldo Levin' in the name or trademark of any corporation" engaged in a business similar to that of ALAS. The parties defined use of the Levin trade name as:
use of such trade name, or variation thereof, (a) as part of the name of a corporation, partnership, joint venture, proprietorship, firm or business, or (b) as the name, symbol or identification of any product.

Under Sanford's management, ALAS produced a series of audio products under the "ALAS" mark, which were identified with the unregistered label "Aldo Levin line". In the advertising and in the literature accompanying the audio products, Levin was identified as designer, but not as owner.

Despite the 1980 agreement, Levin's relationship with ALAS's new management deteriorated. In early 1983, Sanford placed Levin's salary in escrow. In the summer of 1984, Levin left ALAS and moved to the west coast. There he founded another company to produce audio equipment, Harp, Ltd. Levin became president. ALAS has never asserted Levin's agreement not to compete against ALAS in the audio equipment business.

Harp began marketing its first product, the "audio palette", in February 1985. The palette sells for $9,000 and is similar to an equalizer. It is designed to restore tonal balance to a recording by overcoming distortions introduced by the recording itself, the listening room or the audio equipment used to play the recording. Harp attached a gold label to each audio palette stating "Harp by Aldo Levin" and issued a promotional brochure entitled "Harp by Aldo Levin". The brochure began with a one page "Note from Aldo Levin" and contained several photographs of Levin. Its products are marketed exclusively on the west and east coasts, and in Chicago.

ALAS continued to market its "Aldo Levin line" of audio products under the "ALAS" mark. The line did not include a "high end" equalizer. Its products are marketed only east of the Mississippi River and in St. Louis and Minneapolis.

On May 15, 1985, ALAS brought suit in Connecticut state court accusing Harp and Levin of trademark and trade name infringement. During depositions, a "high end" audio dealer explained:
The high end audio market is driven enormously by personality. It's true at the manufacturing and design level in terms of high end audio products. ... Not a lot of people care who runs Sony, for example, but many people care who runs Aldo Levin, who runs Audio Research [another "high end" company], that sort of thing. If Mr. Johnson, for example, were to leave Audio Research, there would be an enormous concern with what he was going to do next. And it would be very questionable whether Audio Research would continue and be significant. And it's important on the sales floor, day in and day out, in terms of the way these products are presented, and I think important in the customers' minds.

He also stated that he would want to carry both Harp and ALAS products because of Levin's reputation in the marketplace as designer of their respective lines of audio equipment. He would be concerned that he "would, in fact, have products that bear Levin's name and not his involvement, and that my competitor has products which don't bear his name but do have his involvement". He noted that the same was true of products designed by Klipsch, who had successively designed the loudspeakers for KLH, AR, and Advent.

ALAS's chief investor, Sanford, admitted that news that Levin was designing products for a competitor "would destroy ALAS's distribution of new products, or virtually destroy it".

Harp filed a motion to remove the case to federal district court. Does the federal court have any jurisdiction other than diversity jurisdiction? Should the federal court grant the motion?

Should the court which hears the case enjoin Harp from using Levin's name in any manner whatsoever before December 31, 1988? Should the injunction, if granted, apply throughout the United States?

END OF QUESTION IV.
Cornucopia, Inc., conducts a retail operation offering a wide variety of products for sale, ranging from bulk coffee and prepacked "gourmet" foods to housewares and kitchen accessories. Its first store opened in Kansas City in 1975; a second store opened in Overland Park KS in 1978. Walter Brown, the owner, chose "Cornucopia" because it is a catch-all term, allowing him to carry any type of merchandise. By deposition he testified, "To me, cornucopia means a combination of many things, as you can see by what I carry in the stores." The logo Cornucopia uses is as follows:

![Cornucopia Logo]

This logo has been utilized by Cornucopia on its store fronts, inside its stores, in newspaper advertisements, and in direct mail promotionals. Brown registered "cornucopia" under the Lanham Act on April 4, 1979.

In Blue Springs Mall, a new shopping center on the east side of Kansas City, Joanne Wilson leases the "food court" area, and sublets to several restaurants and fast food outlets. They share a common central seating area, a concept used in some malls in other parts of the country. Wilson elected to call the "food court" area "Cornucopia". The name was suggested to her by her husband; her children used the term in conjunction with their school's annual fund-raising auction. Wilson testified by deposition:

What inspired us was the seeming applicability of the name "cornucopia" to describe this service we were providing at Blue Springs for restaurants -- a real wide variety of restaurants, ethnic and specialty foods, a fresh food market. A wide variety is a hard
Wilson then consulted her attorney regarding the availability of "cornucopia" as a service mark. Finding that it had not been registered as a service mark or trademark in Missouri, she filed a service mark registration on May 30, 1984. The attorney did not check the federal register. Wilson claims not to have been aware of Brown's use of the trademark; she did not consult the telephone book for listings under "cornucopia" prior to registration. Examination of the phone book would have revealed a "cornucopia" listing in the alphabetical white pages and under "Gifts" in the classified yellow pages.

Blue Springs Mall opened October 2, 1984. The logo used by Wilson is as follows:

Brown first learned of Wilson's use of "cornucopia" in a newspaper article on the opening of Blue Springs Mall. He then visited Blue Springs Mall and viewed the "Cornucopia" logo in use in the "food court" area. Brown then had a meeting with Wilson where he demanded that she discontinue the use of the "Cornucopia" logo in the "food court" area or elsewhere in the
Mall. Wilson refused, claiming rights under her Missouri trademark registration and alleging it would cost $250,000 to change the logo.

Cornucopia, Inc., and Brown brought suit on November 14, 1984, in federal court against Wilson seeking an injunction against Wilson's further use of the "Cornucopia" logo. Should the court grant the injunction? What defenses might Wilson raise? Would it make a difference in Brown's legal rights if he filed a "continued use affidavit" with the Patent & Trademark Office. Is there a deadline for filing such an affidavit? Discuss all relevant legal issues. State a result.

NOTE: Dictionary definition:

 Cornucopia. 1: a curved goat's horn overflowing with fruit and ears of grain that is used as a decorative motif emblematic of abundance; 2: synonym for abundance ....

END OF QUESTION V.
George Morris, an employee of McDonnell Douglas Corp., was working in 1974 to solve an explosive decompression problem in DC-10 aircraft. Separation of the cargo door at high altitude caused the aft [rear] cargo compartment below the main cabin to decompress. The main cabin remained pressurized when the cargo compartment depressurized upon failure of the aft cargo door. Differential pressure across the main cabin floor caused failure of the floor structure and main control cables. Severance of the main control cables caused loss of aircraft control and subsequent crash. Several DC-10s had crashed before the source of the problem was determined.

In February 1974, Morris conceived a side-wall vent to allow rapid decompression of the main cabin. [That prevented the pressure differential which caused the floor and cable failure.] A prototype was built and tested in April 1974, employing a small scale test facility and simulating the pressure and airflow environment of the main cabin floor. Although the vent had worked well during the July testing, concern over its dislodgement by pencils dropped through the grill and its unseating when liquids had been spilled on it caused Morris to stop further development.

In August 1974, Morris conceived another embodiment of the same concept. The following month, prototypes were built and successfully tested in the small scale facility and in a full-scale DC-10 fuselage shell on the ground, the latter containing anthropomorphic dummies in the seats and briefcases, newspapers, and hats located throughout the cabin. [The cabin was pressurized above atmospheric pressure by the same amount as the pressure differential between cabin pressure and high altitude atmospheric pressure experienced by a flying aircraft. The pressure in the cargo compartment suddenly was released by blowing off the aft cargo door with explosive bolts. The company]
did not want to test the cabin venting system in a flying aircraft in case it failed, which would cause another crash. The September 1974 tests revealed that the new sidewall vents would not be blocked by debris carried to them by the rush of air venting from the main cabin. Morris filed a disclosure with the company patent law department on October 10, 1974.

At a meeting with 45 officials of 26 major airlines using the DC-10 on April 10, 1975, McDonnell-Douglas disclosed and offered to sell its sidewall venting system as a retrofit for existing aircraft. No mention was made at that meeting to keep the invention a "secret".

A patent was applied for on December 17, 1975. The application was based on Morris's October 10, 1974, disclosure. Because of the press of prior invention disclosures and turnover of personnel in the company's patent law department, it had not been possible to file Morris's patent application sooner.

On August 27, 1975, Conrad Gilbert, an employee of Boeing Corp., filed a patent application for essentially the same venting system. Boeing was concerned about avoiding main floor pressure differentials even though its aircraft did not experience cargo door failures. His application was based on a disclosure to Boeing dated April 11, 1975. His research notes indicated a written description of his concept on July 1, 1974, small scale testing in October 1974, successful fuselage testing in November 1974 [similarly to McDonnell-Douglas's fuselage testing], testing in an aircraft flying at high altitude the following month. The flying aircraft test added no new information to that already gained from the fuselage testing.

Upon receipt of the Morris application in December 1975, the Patent & Trademark Office declared an interference. The single court of the interference reads:

An aircraft of which the structure comprises:
   a passenger cabin;
   at least one normally pressurized baggage compartment;
a longitudinal floor separating said passenger
  cabin from said baggage compartment;
  openings forming in the peripheria of said floor,
  for communicating said cabin and said baggage
  compartment; and
  ventilation devices disposed on the cabin side of
  said floor and at least partially concealing said
  openings, said ventilation devices movably mounted with
  respect to said openings for enabling spontaneous
  clearing of said openings responsive to a sudden
  decompression in said baggage compartment.

To whom should the Board of Patent Interferences award the
patent? Discuss all relevant legal issues. State a result.

END OF QUESTION VI.