

NOTE: This order is nonprecedential.

## United States Court of Appeals for the Federal Circuit

2008-1511, -1512, -1513, -1514, -1595

THERASENSE, INC. (now known as Abbott Diabetes Care, Inc.)  
and ABBOTT LABORATORIES,

Plaintiffs-Appellants,

v.

BECTON, DICKINSON AND COMPANY,  
and NOVA BIOMEDICAL CORPORATION,

Defendants-Appellees,

and

BAYER HEALTHCARE LLC,

Defendant-Appellee.

Appeals from the United States District Court for the Northern District of California in consolidated case nos. 04-CV-2123, 04-CV-3327, 04-CV-3732, and 05-CV-3117,  
Judge William H. Alsup.

ON MOTION

Before GAJARSA, Circuit Judge.

ORDER

Lawrence S. Pope moves for leave to intervene in Therasense v. Becton, appeal nos. 2008-1511 et al. The appellees oppose.

In the underlying decision, the United States District Court for the Northern District of California held, inter alia, that the patent-in-suit was unenforceable, due in part to the conduct of Pope, who prosecuted the patent.

Pope contends that he should be granted leave to intervene in this case. He states that his reputation has been called to question and that he is now being compelled to answer to professional disciplinary bodies. Pope asserts that he meets the standards for intervention, i.e., that he has a substantial interest in the appeal, that his interests will not be adequately represented by Abbott, and that intervention will not cause any undue delay or harm. Pope contends that his situation is analogous to the case of Penthouse Int'l Ltd. v. Playboy Enterprises, Inc., 663 F.2d 371, 373 (2d Cir. 1981), in which an attorney was allowed to intervene in an appeal of a court order that included findings of misconduct by the attorney.

Pope's reliance on Penthouse Int'l is misplaced. In Nisus Corporation v. Perma-Chink Systems, Inc., 497 F.3d 1316, 1319-20, 1322-23 (Fed. Cir. 2007), we affirmed a district court's denial of a motion to intervene by an attorney who had prosecuted a patent and who sought to challenge factual findings concerning his conduct that were related to a finding of unenforceability. We expressly distinguished Penthouse Int'l because it involved an attorney who sought to intervene after a district court sanctioned the attorney and directed the attorney to pay a sanction. In this case, Pope has shown no similar type of sanction. Nisus, 497 F.3d at 1319 ("Critical comments, such as in an opinion of the court addressed to the issues in the underlying case, are not directed at and do not alter the legal rights of the nonparty.").

Accordingly,

IT IS ORDERED THAT:

The motion is denied.

**OCT 23 2008**

Date

cc: Barry Levenstam, Esq.  
Rohit Kumar Singla, Esq.  
Rachel Krevans, Esq.  
Bradford J. Badke, Esq.

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Arthur J. Gajarsa  
Circuit Judge

**FILED**  
U.S. COURT OF APPEALS FOR  
THE FEDERAL CIRCUIT

OCT 23 2008

JAN HORBALY  
CLERK