



**Vas-Cath, Inc. v. Mahurkar, 935 F.2d 1555 (Fed. Cir. 1991) (Rich)**

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## **CASE HISTORY**

Vas-Cath filed a declaratory judgment. The district court granted summary judgment to Vas-Cath, invalidating Mahurkar's patents (by Easterbrook). Mahurkar appeals.

## **CASE FACTS**

- The patents cover a double-tube catheter, used to allow blood to be removed from an artery, processed, and returned to the close place of removal.
- Both utility applications include the same drawings as the '081 design patent.
- The inventions have a numeric limitation, i.e., "return tube diameter is substantially less than 1.0 but substantially greater than 0.5 times the diameter of the combined tubes.
- For purposes of the summary judgment motion:
  - Mahurkar conceded that, unless antedated, his patents are anticipated by '089 patent.
  - Vas-Cath conceded that '081 design patent enables POSA to practice the inventions.

## **ISSUE**

Whether the drawing of '081 design patent satisfies the §112 1 "written description" requirement to entitle the later utility patents to earlier filing date?

## **HOLDING**

Could be; therefore, the summary judgment is in appropriate.

## **ANALYSIS**

- Design patent drawings may satisfy the §112 1 "written description" requirement.
- The features of the inventions can be measured from the drawing of '081 design patent.

- A declaration of an expert shows that POSA would have understood the limitation.
- The declaration and Vas-Cath's non-rebuttal raise a genuine issue of material fact.