

Patent case: Pemetrexed, Austria

Kluwer Patent Blog

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[Paul Reiter, Manuel Wegrosteck \(Gassauer-Fleissner Rechtsanwälte GmbH\)](#)

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The Higher Regional Court of Vienna confirmed the three-factor Bicalutamid/Schneidmesser Test, holding that a variant is equivalent to an invention for the purposes of infringement if the following conditions apply cumulatively:

1 The modified embodiment solves the problem using modified, but objectively equivalent means (equivalent effect);

2 The person skilled in the art is able to infer the alternative means, based on his expert knowledge, as having an equivalent effect with regard to the solution of the problem (obviousness);

3 The considerations of the person skilled in the art are oriented towards the meaning of the technical teaching protected by the patent in such a way as to ensure that the person skilled in the art will take the alternative embodiment into consideration as an equivalent solution to the patented embodiment ("equivalence" or "parity").

Case date: 14 April 2018

Case number: 133 R 15/18f

Court: Higher Regional Court of Vienna

A full summary of this case has been published on [Kluwer IP Law](#).