Introduction

(Sub-title: “Evidence Based Policy Would Be Nice”)

- Experience is in system management, not case law
- Want to identify the “big issues”
- Aim should be simple process for most users
- This means “appropriate regulation” in its best sense
- Changes should address real issues in a focussed way, and be properly justified

Scope

- Some essential background
- What seem to be the main issues?
- What is uncontroversial?
- What can we expect from the Commission by way of proposed legislation?
- What other ways can be expected to produce changes?

Timetable

- Study called for by Council in May2007
- MPI awarded contract in August 2009
- OHIM input published January 2010
- MPI Report published March 2011
- Commission publish IPR strategy April 2011 (including new draft Customs Regulation)
- Commission legislative proposal expected March 2012
- Enactment 2013?

Key Facts to Remember

- Over 100,000 CTM applications annually
- 3.8% never proceed to exam – eg no fee
- 7% refused on AG or withdraw before publication
- 17% opposed
- 8% of published will not be registered, eg opposition
- 65% of oppositions settled w/o decision

Key Facts 2

- Around 1200 cancellations filed annually
- 20,000 renewals annually – just over 50%
- 99.5% of registrations are for “conventional” marks - ie word or figurative marks

SSC009 - Statistics of Community Trade Marks 2011

Hasta / Bis / Until / Jusqu'à / Fino : 12/2011

DESGLOSE POR TIPO DE MARCA
AUFSCHLÜSSELUNG NACH ART DER MARKE
BREAKDOWN BY TYPE OF MARK
VENTILATION PAR TYPE DE MARQUE
RIPARTIZIONE DOMANDE PER TIPO DI MARCHIO

Tipo de marca Art der Marke Type of mark Type de marque Tipo de marchio	1996-2010	% Mundo Welt World Monde Mondo	2011	% Mundo Welt World Monde Mondo	Total Ingesamt Total Total Totale	% Mundo Welt World Monde Mondo
3D	3,304	0.47	318	0.42	3,622	0.47
Colour	248	0.04	21	0.03	269	0.03
Figurative	271,456	38.85	32,715	43.07	304,171	39.26
Hologram	3	0.00			3	0.00
Olfactory	1	0.00			1	0.00
Other	361	0.05	54	0.07	415	0.05
Sound	112	0.02	12	0.02	124	0.02
Word Mark	423,263	60.57	42,829	56.39	466,092	60.16
Total Ingesamt Total Total Totale	698,748	100.00	75,949	100.00	774,697	100.00

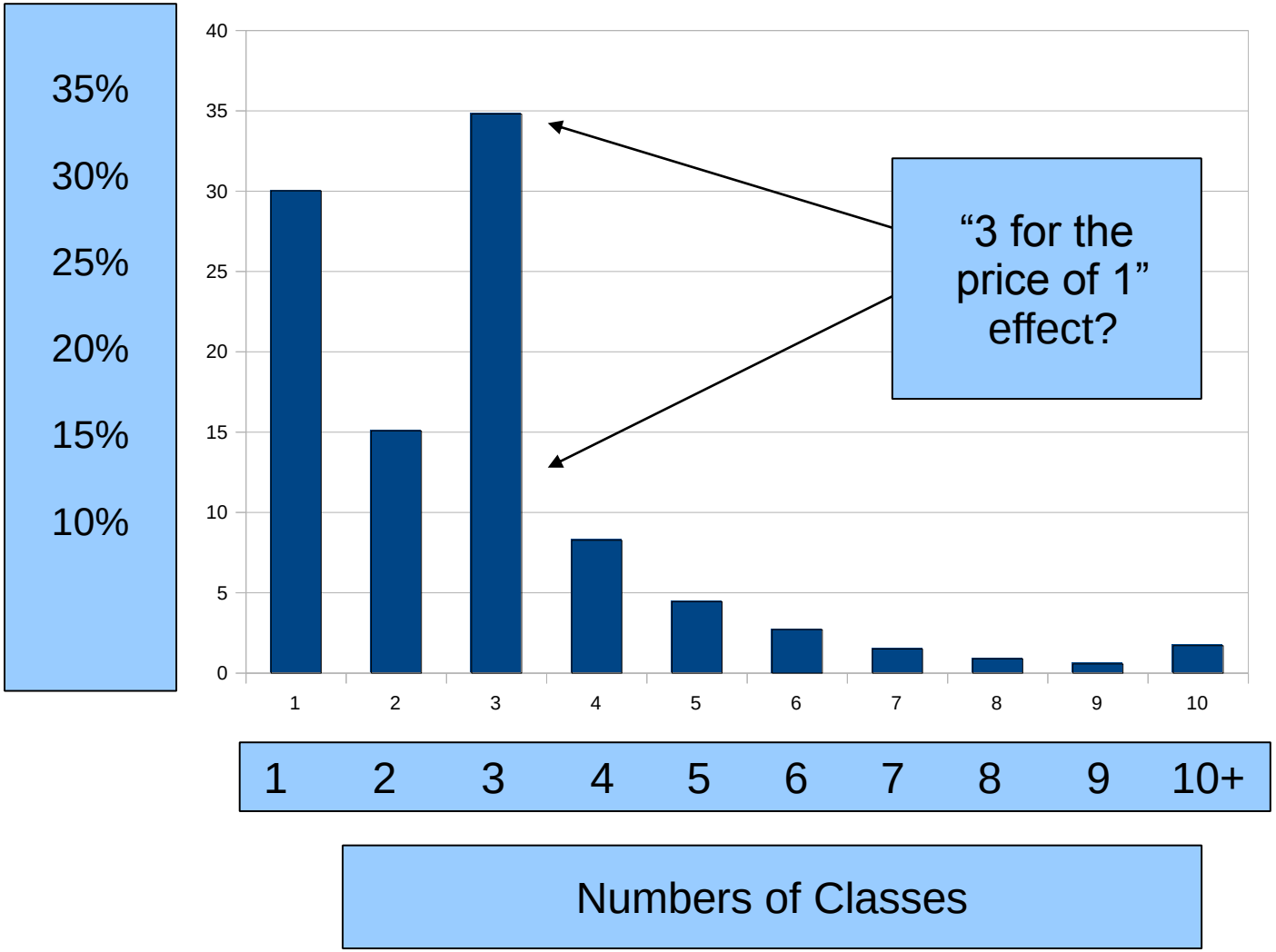
Inno-Tec

- Some applicants applying for multiple marks
- Such strategies being used increasingly
- Probability of successful registration rising, particularly for larger more experienced firms
- Probability of opposition falling in most classes
- Larger users experience lower opposition rates
- One estimate of unused marks: 10%

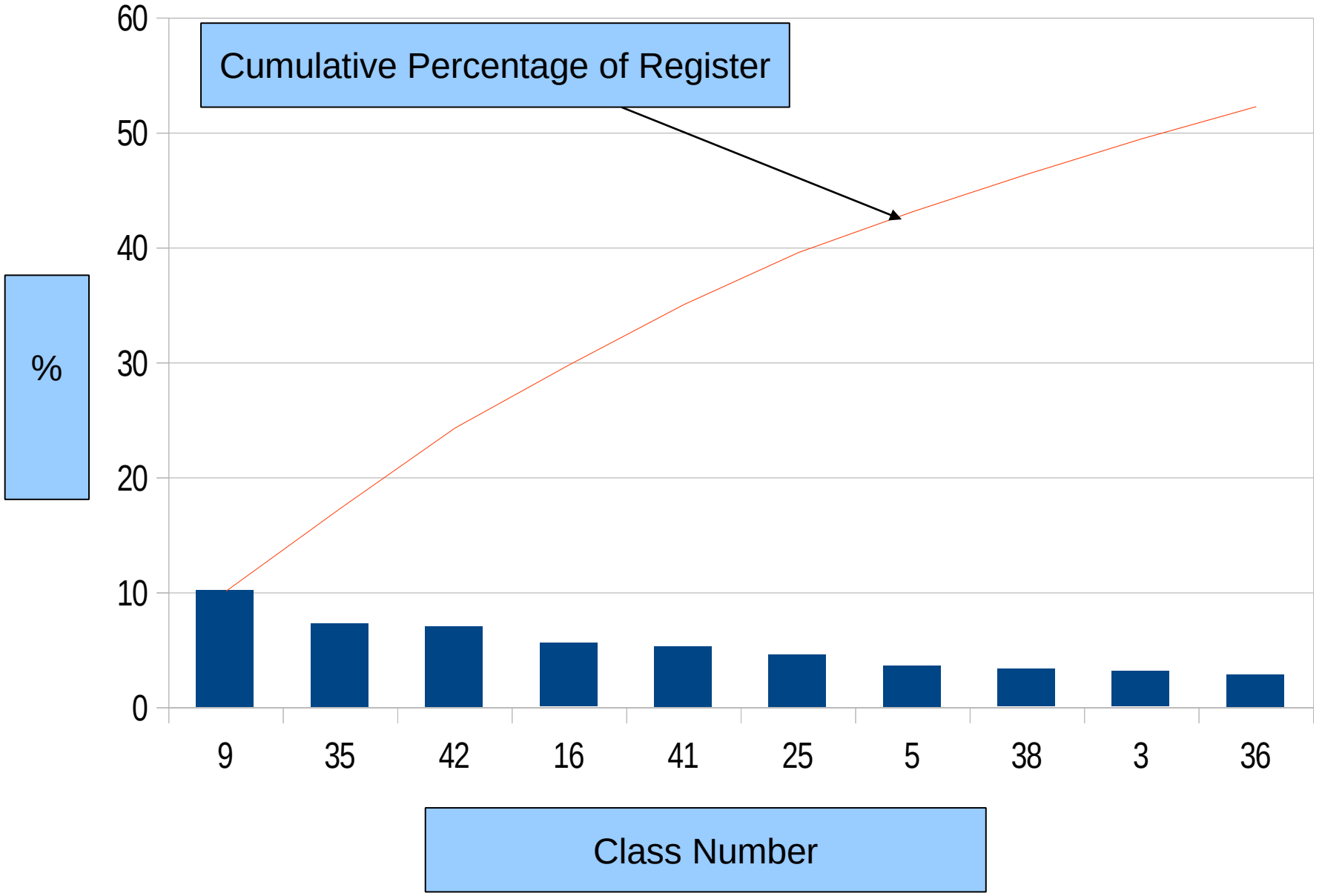
User Priorities

- Unitary character of CTM maintained
- No “enforced coexistence”
- Harmonization of procedure and practice, eg opposition, class headings, relative grounds
- No change in class fees
- No change in OHIM opposition period
- Goods in transit - but already settled as status quo in new Customs Regulation

Applications and Classes



Class Populations



Classes: Conclusions

- CTMs are not evenly spread among classes
- 9 classes account for half the Register
- Class 9 alone is 10% of Register
- No correlation between class population and opposition rate
- We must be careful not to complicate life for everyone to “solve” a problem that is not yet sufficiently understood

Use

- Consensus appears to be to leave it to the Courts re territorial extent of protection
- Will extra recitals have a substantive effect?
- Problems with “enforced coexistence”
- Declarations of use problematic and disproportionate
- Some evidence supports fee per class
- Above all, no systematic evidence of real problem, its dimensions and characteristics

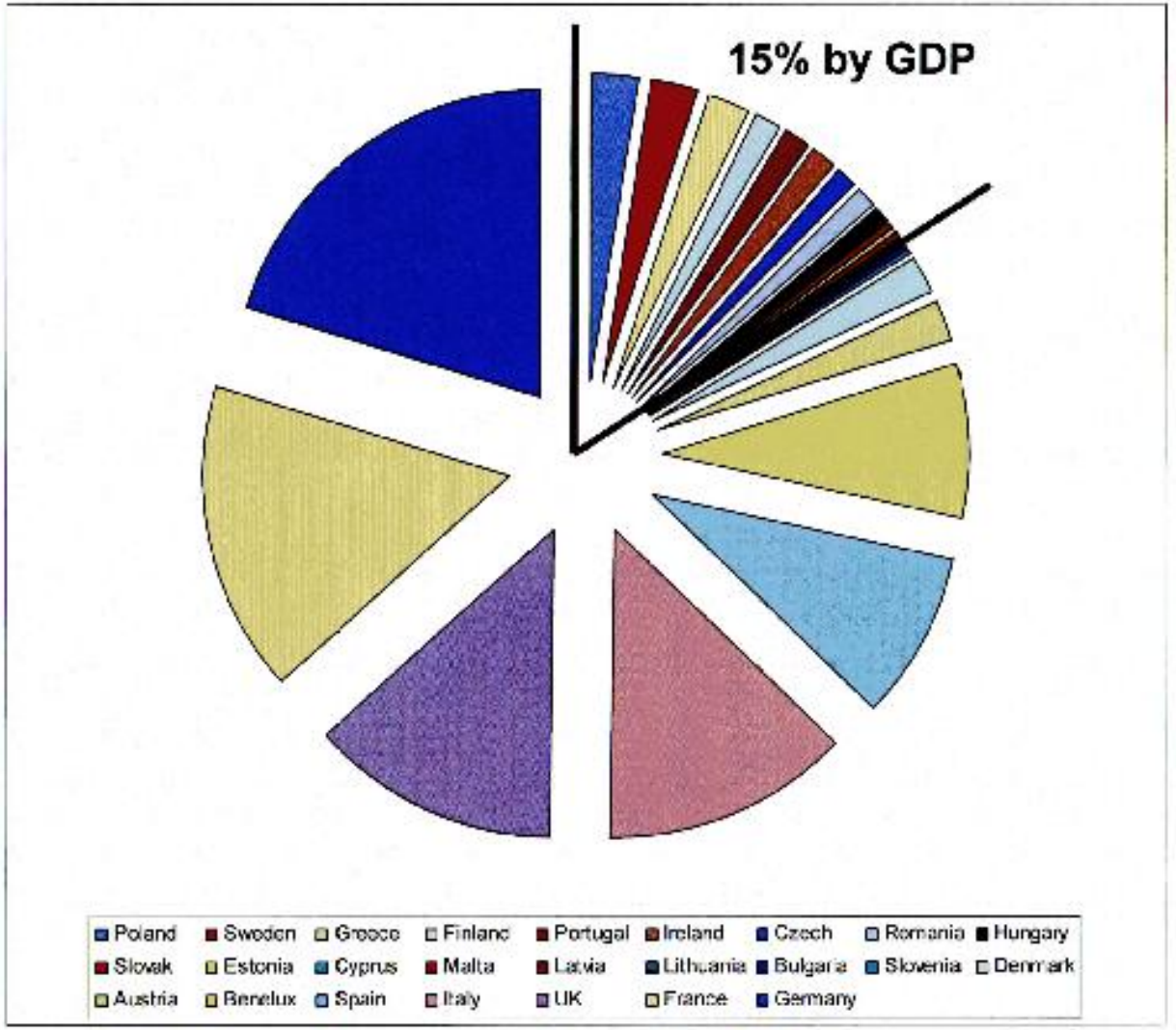
Uncontroversial Changes Likely

- “Graphical Representation”
- E-business updating
- Move to single class fee (semi-controversial)

Directive: Harmonization+?

- Consensus in favour of more procedural and practice alignment
- Some MS already on record against changing domestic law - Lisbon Treaty = QMV
- Will the MS accept increased mandatory provisions on eg opposition, relative grounds?
- Is there hope for the new OHIM Convergence Programme? Class Headings will be the first test!

Relative Grounds State by State - GDP




That's all Folks!