

**Office for Harmonization
in the Internal Market**
(Trade Marks and Designs)

OHIM and the EU Trade Mark Study

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Munich, September 2010

WWW.OAMI.EUROPA.EU



- General Impressions of Study
- Some Specific Issues raised:
 - Relative Grounds Examination
 - “Clutter”
 - Quality/Consistency



- **Overall, respondents feel the CTM system is currently working fairly well, with most users saying the system is getting better and better (proprietors: 41 percent, agents: 58 percent).**
- **General attitudes towards OHIM are significantly more positive among proprietors with high levels of all kinds of activity than among less active proprietors.**
- **In contrast, agents with a high OHIM activity level tend to have less positive general attitudes towards OHIM than agents with lower levels of OHIM activity do.**



**House Republicans
Launch Anti-
Government Spending
Program**
Published May 15, 2010
| FOXNews.com

**Reducing unnecessary
bureaucracy**
The Department's Better
Regulation Unit (BRU)
coordinates the reduction
of bureaucracy and
regulation resulting from
DCSF policies.

David Cameron pledges to end Labour's health and safety 'neurosis'

forthcoming Great Repeal Bill. Addressing the readers of this newspaper, he explained that, under New Labour, thousands of unnecessary new laws and regulations were passed, "and it is our liberty that has paid the price".

India Steps Down Deregulation Road

**Business Attitudes
Towards Government
Regulations, January
2003: Executive
Summary**

54% of businesses agree that regulations are a significant burden on their business



System A

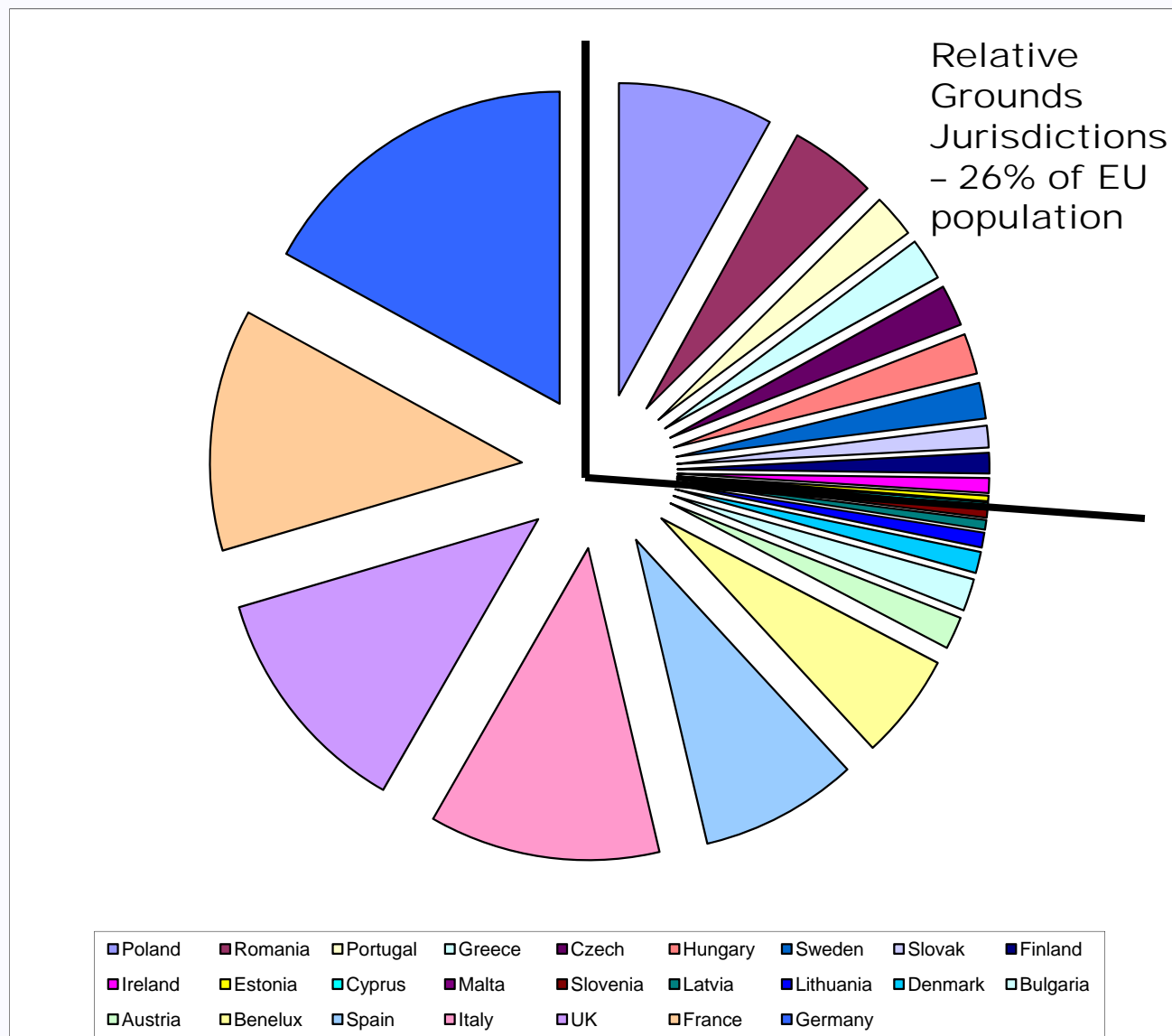
- Actual use required
- Relative grounds exam
- Narrow specifications
- High level of “Office actions”
- Regular re-establishment of use

System B

- Registration can anticipate use
- Absolute grounds exam only
- Conflicts responsibility of parties
- Laissez faire approach to specifications

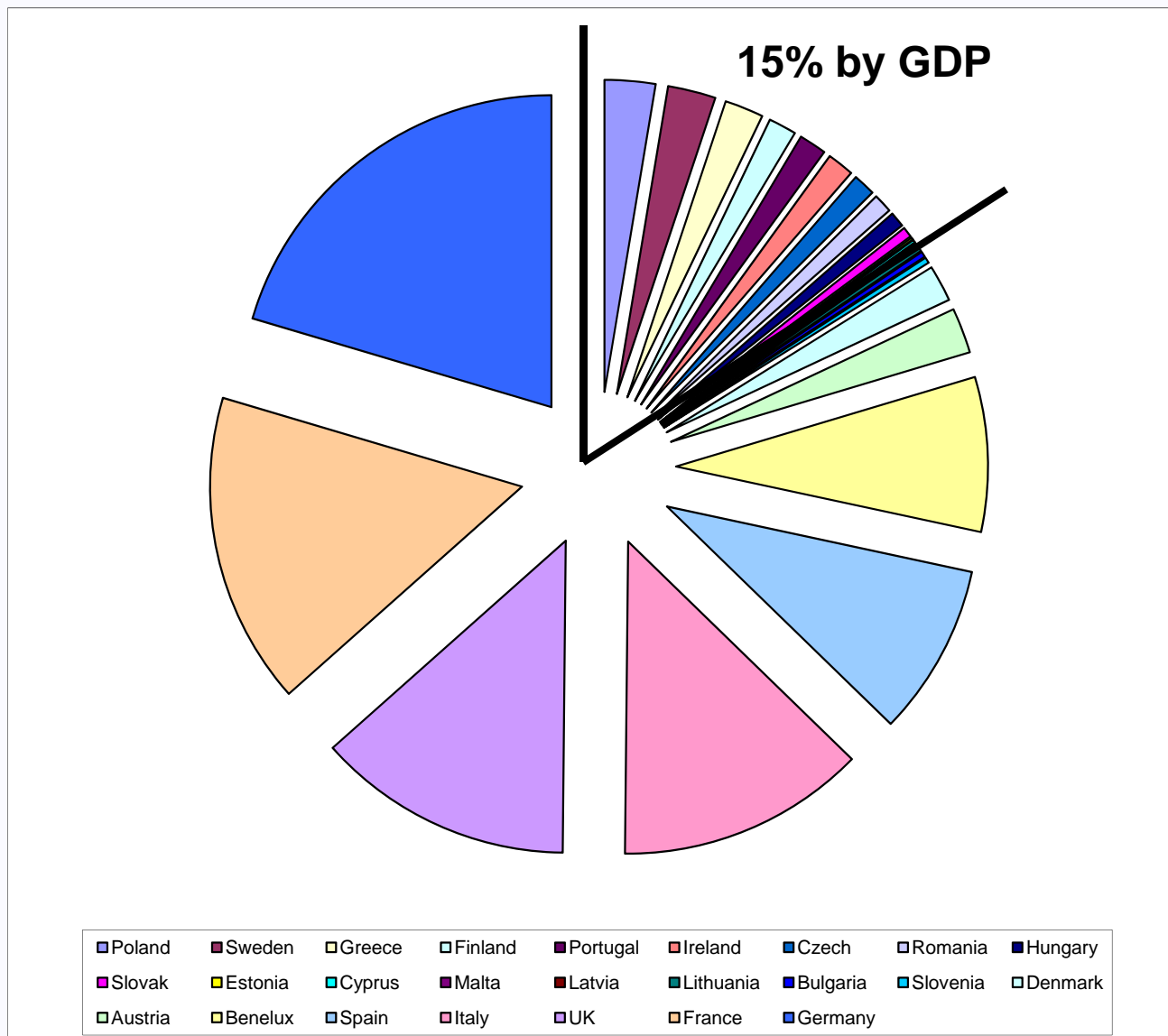


Relative Grounds Examination State by State





Relative Grounds State by State - GDP





- Issues of practicality
 - Can an examiner compare, eg Irish and Latvian marks a priori, without evidence?
- Issues of philosophy/system coherence
- UK experience October 2008, 1 year on:
 - Oppo rate 1/5th previous objection rate
 - Number entering cooling off 2x those defending
 - Before, number defending 2x cooling off
- Scope for co-existence seems much greater in diverse EU market



- “Ever increasing costs of clearing a trade mark, already prohibitive for the whole EU”?
- Version 1: too many marks, 3 classes for price of 1
- Version 2: specifications too wide, leading to non-use of much of the scope of protection, and problems clearing new marks
- OHIM position: let us see quantitative evidence on the size and scope of the alleged problem
- Do not lightly consider examination of use, relative grounds exam, or other burdensome “solutions”.



Class	Ave Classes Applied	Oppo Rate	Title
33	1.62	18.7	Alcoholic beverages etc
5	1.81	20.8	Pharma
45	3.94	12.8	Legal services etc
26	4.35	19.6	Lace, emboidery etc

There is a wide variation in number of classes applied for, depending the on characteristics of each class



Class	CTMs	Ave classes applied for	Oppo Rate	Title
9	238,000	2.32	14.9	Scientific, computers etc
13	2,700	2.75	17.9	Firearms



- “Exclusive rights limit competition, and should not extend beyond the actual need for protection”
- True for patents, but for trade marks?
- TMs are an enabler of competition
- No one is really prevented from competing – they just need to find another name/mark



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- OHIM position: let us see quantitative evidence on the size and scope of the alleged problem
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- **“Both agents and proprietors basically give the same assessment: OHIM’s decisions are rated somewhat better in terms of quality and consistency than in terms of the time needed to issue decisions”**
- *“Office proceedings too formalistic (e.g. language regime). Reasoning of decisions often has too little thought and persuasiveness and is too formulaic.”*
- **“Respondents assess OHIM’s decisions as being substantially more consistent than decisions by the national trade mark offices within the EU”**



- Opposition last area of backlog
- Had output and quality problems
- Reorganisation Summer 2009
- More decisions by end of June 2010 than whole of 2009
- Measured quality up from very poor 78% to 91%, and rising
- Timeliness up to 75% (17 weeks from end of adversarial part to decision)
- Some signs of reducing settlement rate



Quality of Decisions Service Standards 2010					
	Objective	1st Quarter	2nd Quarter		Further Info
Community trade marks					
Decisions on classification complying with OHIM quality criteria	At least 96%	96.08%	94.83%		The service standards on quality of CTM decisions measure the percentage of reviewed decisions that comply with the Office's quality criteria. For more detailed information concerning the quality criteria please see the Quality check list.
Decisions on absolute grounds complying with OHIM quality criteria	At least 99%	99.17%	98.76%	Incorrect outcome 1.24%	The procedure used to check the quality of decisions is described in CTM quality checks procedure.
				Format error 0.00%	
				Content error 0.00%	
Opposition decisions complying with OHIM quality criteria	At least 95%	90.99%	90.60%	Incorrect outcome 2.39%	
				Format error 1.03%	
				Content error 8.03%	
Registered Community designs					
RCD publications complying with OHIM quality criteria	At least 98%	98.87%	98.32%		The standard measures the percentage of revised designs publications that comply with the Office's RCD quality standards (RCD quality checks procedure and standards).



- The G&S Similarity Tool:
 - Is a database on similarity of pairs of G&S
 - Is a search tool
 - For opposition and cancellation decisions
- Aims:
 - Provide help and support to the examiners
 - Harmonize the practice on the assessment of similarity of G&S – guarantee coherence (no discrepancies between decisions/same result on similarity of the same G&S)



Results (4)

Select Columns

Limit number of results to 10,000

Pair id	Contested mark class	Contested mark expression	Similarity	Earlier right class	Earlier right expression	Reasoning category	Reverse	Decision reference	Case name	
Search query: <cellulose,pulp> (4 Item)										
15	1	Cellulose in slabs for industrial pur	Similar	1	Cellulose pulp	2,6,8	YES	B 1 239 492		+
20	1	Cellulose in pipes for industrial pur	Similar	1	Cellulose pulp	2,6,8	YES	B 1 239 492		+
21	1	Cellulose in rods for industrial pur	Similar	1	Cellulose pulp	2,6,8	YES	B 1 239 492		+
252	1	Cellulose in blocks for industrial pu	Similar	1	Cellulose pulp	2,6,8	YES	B 1 239 492		+

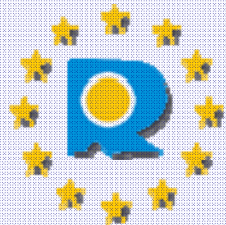
Page 1 of 1

Displaying results 1 - 4 of 4

- After launching the search, the result table is expanded and populated with the pairs matching your query





- Not an “algorithm” but a tool for finding approved precedents
- Not for examiner to distinguish a new case from precedents
- Of course, will reduce scope for attorney to argue that their client’s case is different etc
- Proposition: A truly consistent approach inevitably reduces scope for advocacy to make a difference



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