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## **Textual Knowledge in Legal Translation**

### **Abstract**

In this paper, we discuss the importance of textual knowledge for the translator in different cultures. By knowing the superstructure of the different text types, the translator will have less difficulties in his/her decision-making process. The more familiar the translator is with the different types of texts within a given culture and their superstructures, the better the reception of the translated text in the target culture. To this purpose, we have taken as our material texts from industrial property law. Most of the times, the main problem translators encounter derives not only from the subject field of a document, where we deal with a very specialised terminology, but also from the text type itself. Recent research in Translation Studies has underlined the importance of this aspect, and specifically in the field of legal translation (Borja, 1998, 2000). This paper is intended to show the specific textual conventions that characterise some of the most commonly translated documents regarding the registration of a trade mark. The documents considered in this paper make specially reference to those we find both in the Spanish and the British legal systems.

### **1. Introduction**

Nowadays the study of translation is increasingly being considered as a multidisciplinary discipline (Snell-Hornby, 1988; Hatim and Mason, 1990; Ulrych, 1999; Hurtado, 2001 among others). The notion of multidisciplinary and interdisciplinarity not only applies to translation studies in general, but also to specialised translation. Indeed, most of the documents belonging to specialised translation cover a wide range of different disciplines, such as, medicine, law, sociology, economics or international trade.

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In line with specialised translation, this paper deals with texts from a very specific legal domain, that of industrial property law. Moreover, this paper is intended to show the specific textual conventions that characterise some of the most commonly translated documents regarding the registration process of a trade mark and with special reference to those we find both in the Spanish and the British legal systems.

There are various reasons that can justify the research in the translation of industrial property law documents. First of all, both economically and legally, the function of industrial property rights, namely patents and trade marks, is paramount in modern business. Patents, for instance, contribute to the developing of science and technology, and hence the economy of a given country. The essential function of trade marks is to give the consumer a guarantee of the product purchased, enabling them to distinguish one product from others of different origin.

Secondly, the importance of this topic from the translation point of view is illustrated with the following facts and figures. According to statistical data from the different industrial property offices involved in this survey (the Spanish and the British one), there has recently been an increase in the number of applications for registration of trade marks. Only in Spain 70,000 applications were filed in the year 2001, whereas in the United Kingdom there were 40,000 for the same time period.

Thirdly, the importance of having a trade mark protected within the European Union resulted in the creation of an European Office, the Office for the Harmonisation of the Internal Market, (OHIM) located in Alicante, Spain, and in which a specific linguistic policy governs the production and the translation of the documents appearing in this registration process. In accordance with article 115 from European Council Regulation, there are mainly two different languages, the so called *language of application* that can be any of the official languages within the European Union and the *language of procedure* that can be any of the working languages of the OHIM, that is, English, French, German, Italian and Spanish.

Fourthly, one of the main effects of EU membership has been the continuing harmonisation of national legislations, including those referring to intellectual property law. In this sense, we were curious about how this could affect the creation of new texts within the European context.

## 2. Theoretical framework

We believe that in the case of specialised translation the main problem translators encounter derives not only from the subject field of a document, where they deal with a very specialised terminology, but also from the text type itself. In this regard, the wide variety of documents involved, for instance, in the registration process of an international trade mark or, even in the registration of an European patent, force the translator to take important decisions when dealing with this type of mixed texts.

Recent research in Translation Studies has underlined the importance of analysing the textual aspect. Seminal work has been done by Borja (2000) within the legal domain and by Gamero (2001) in the field of technical texts. However, within the field of industrial property law, little research has been conducted. In the case of patents, Göpferich (1995) analysed the macrostructure of this type of mixed documents and in the case of trade marks Sergio (2000) analyses the translation of the trade mark names and its importance from the point of view of the target culture and target consumer of a given product. In an attempt to fill this gap in translation research, we would like to propose an analysis of the textual conventions of a trade mark document, the *registration certificate*, taking into account the superstructure of this document, as the core textual parameter of this survey. Several authors have dealt with this parameter, such as Van Dijk (1980), Jiménez (2000), among others. In accordance with the former author *a superstructure is the schematic form that organises the global meaning of a text* (Van Dijk, 1980: 108). Jiménez considers the superstructure as a parameter directly related to the external form of a text and its belonging to a specific typology:

En líneas generales, el concepto de macroestructura está relacionado o se refiere al contenido global o general del texto o a éste considerado también como un producto total e interdependiente. El término superestructura está directamente relacionado con la forma del texto, con la forma externa y su pertenencia a una tipología u otra (Jiménez, 2000: 119).

This parameter is very much connected to the textual competence that a translator must have, which is that of a full understanding of the text and, in our opinion, this could be achieved by analysing the superstructure of a given text, since by doing so, we can get the textual conventions of that text. Therefore, our paper deals with the textual

analysis within the translation process: *Text understanding is a kind of problem-solving, and it is one of the tasks of pre-translational text analysis to find where the solutions of textual comprehension problems come from* (Wilss, 1996: 172-3).

To date, models related to textual conventions have been proposed both for a specific language combination and/or for a specific text type (Clyne 1987, 1994; Bhatia 1993; Kussmaul 1995, 1997; Trosborg, 1997; Engberg 1992, 1997, 2000; Göpferich 1993, 1995; Borja 1998, 2000; Gamero 2001; Lvovskaya 2002 and Alcaraz 2002).

Clyne (1987, 1994), based upon the analysis of a corpus of academic texts in German and English, proposes a sociocultural model through which cultural patterns reflected in texts can be systematised using the parameters of linearity, relevance and symmetry. In his research he found that English texts are more in line with these three parameters, whereas German academic texts are more content-oriented and have more digressive elements. «[...] in 'Anglo' discourse but not in content-oriented traditions, relevance is closely linked with linearity, and, to some extent, with symmetry. This applies to spoken as well as to written discourse (Clyne, 1994: 193)». As we will see, Spanish texts are also more content-oriented and, therefore, with similar cultural patterns to those reflected in the German ones, even if they do not belong to the field of academic texts.

Engberg (1992) proposes a textual analysis from the pragmatic point of view. To that purpose, he compiled a corpus of German judgements arising from First Instance Courts. His model is based on Bühler's model, according to which the communicative situation plays a very important role and, therefore, directly affects the textual conventions of the texts. One of the most interesting findings of this author lies on the fact that, within a given communicative situation, there are certain "intermediaries", that can affect these textual conventions. He refers particularly to the judges working in the First Instance Courts in Germany, where they must follow certain rules for the drafting of judgements. This could also be applied to industrial property documents, for trade marks agents together with national, international and European institutions also play an important role in the textual conventions, both from the format and the content point of view:

Erst eine Analyse, die die Institutionalität als Ausgangspunkt nimmt und aus ihr Schlüsse auf Zweck und Ausgestaltung des Textes zieht, also nicht von den Kommunikationsteilnehmern als Individuen ausgeht, führt zu einer wirklich adäquaten Beschreibung solcher Texte. [...] Das Merkmal der Autoritativität bei Urteilen ist somit nicht von der Person des Richters abhängig, sondern von seiner Rolle als Mitglied des Gericht und somit als Mittel zur Ausführung der Rechtsprechungsfunktion. Ein Urteil, das von einem Richter in Ausübung seiner Tätigkeit als Mitglied eines Gerichtes formuliert wird, ist automatisch autoritativ (Engberg, 1992:165-7).

Bathia (1993) applies a textual analysis from three different points of view: the lexico-grammatical, the text-patterning analysis and the structural interpretation of the genre. In accordance with this author the textual analysis is divided into the following steps, some of which have also been underlined by Engberg (1992), especially those concerning the analysis of situational and institutional contexts:

<i>Steps in the textual analysis of genre BHATIA (1993)</i>
1.- Analysis of situational context
2.- Search of bibliography
3.- Analysis of situational context (redefinition)
4.- Selection of corpus of texts
5.- Analysis of institutional context
6.- Analysis applied to the text (lexico-grammatical, text patterning and structural interpretation of genre)
7.- Confirmation of results

Kussmaul (1997) has approached the study of textual conventions, in line with Engberg (1992), Bathia (1993) and Göpferich (1993), from the pragmatical and cultural points of view. Kussmaul considers that the concept of *convention* is very much connected to those of *regularities* and *rules* within a given culture. In accordance with this author, success in communication relies pretty much on the fulfilment of expectations in the target culture. He distinguishes between *constitutive rules* with the form “X counts as Y in the context of C” institutional and *regulative rules*, that is, the ones regulating the performance within a given culture. These rules have the form of “If Y, do X”. For Kussmaul, the most appropriate ones for the study of the textual conventions are the latter:

Conventions imply conformity and expectation (cf. Lewis 1969: 78), and when people use words they can normally be expected to use them in the same sense as other people do, i.e. to conform to generally agreed on regularities. In the same way, when people produce specific text types, such as business letters, they can be expected to conform to specific regularities and rules. If they do not, communication may turn out to be difficult or even break down (Kussmaul, 1997: 68).

When bearing in mind the main approaches highlighted by these authors we realise that they share some viewpoints. Engberg (1992) and Bathia (1993), for instance, agree on the importance of the analysis of the institutional context as a core element that directly affects the structure of the text. Kussmaul (1997) and Clyne (1987, 1994) agree upon the importance of analysing cultural elements in order to meet target reader expectations. None of them, on their own, can explain the characteristics of the textual conventions of industrial property texts, but they constitute a sound basis for the model we propose.

To our purpose, we would like to apply a similar model to that of Gamero (2001) for the analysis of the registration certificate, in which the key concepts are those of genre and superstructure. Moreover, within the concept of superstructure we will analyse certain variables such as the number of blocks and sections within a given text, the hierarchical order of these blocks and sections, and the level of standardisation presented in these documents both in the Spanish and the British legal cultures:

La superestructura de un género está compuesta por una serie de fragmentos textuales, que se encuentran ordenados jerárquicamente, y que reciben el nombre de bloques y secciones. Los bloques son aquellas partes del texto que tienen una determinada función específica en relación con la función general del mismo. [...] Los bloques se dividen en secciones, cada una de las cuales posee asimismo una finalidad concreta respecto de la función del bloque en la que se halla incluida (Gamero, 2001: 109).

### **3. Material**

The material we have used for our research is based on a corpus composed of 40 parallel texts, originally written in Spanish and English, and which has been gathered by visiting the main institutions and organisations involved in industrial property law, that is, the Spanish Industrial Property Office, (*Oficina Española de Patentes y Marcas*), the

British Patent Office, the Office for the Harmonization of the Internal Market, (OHIM) and the World Intellectual Property Organization, (WIPO). For space reasons, we will deal only with one of the documents compiled in this bilingual corpus, which is the *registration certificate* of a trade mark in Spanish and English.

#### **4. Methodology**

We propose a mixed model which takes into account elements similar to that of Gamero (2001) for the analysis of our corpus, in which the key concepts are those of superstructure, already defined, and genre, understood as a prototype of text used in specific communicative situations, which are repeated within a given culture and with the purpose of making communication possible. Within the concept of superstructure we analyse certain variables such as the number of blocks and sections within a given text, the hierarchical order of these blocks and sections, the level of standardisation presented in these documents and the kind of conventional linguistic forms associated with each of these blocks and sections. On the other hand, we take into account the legal background provided by the comparative legal analysis of the different legal instruments that rule the trade marks law in Spain, in the United Kingdom, as well as in Europe and at international level.

Among the concepts involved in our model we have already defined those of *superstructure* and *genre*. We would like to be more explicit about other notions intervening in this textual approach. First of all, what we have called *legal cultures* makes reference to the main legal instruments regulating industrial property law, that is, *Organic Law 17/2001, 7<sup>th</sup> December of Trade Marks* and *Royal Decree 687/2002, 12<sup>th</sup> July* for the implementation of the Spanish law of trade marks in the case of Spain; and *Trade Marks Act, 1994* and *Trade Marks Rules, 2000* in the case of the United Kingdom. In this respect, we would like to stress the importance of these legal instruments for the study of textual conventions, since, although most of them have frequently been used by translators as a useful terminological resource, in the particular case of industrial property law, trade marks law in our research, these legal instruments determine the different kind of genres appearing in the registration process of a trade mark, the main items of information (blocks and sections) to be included in these genres, the linguistic

policy regulating this genres and the communicative situation in which the translation brief is described.

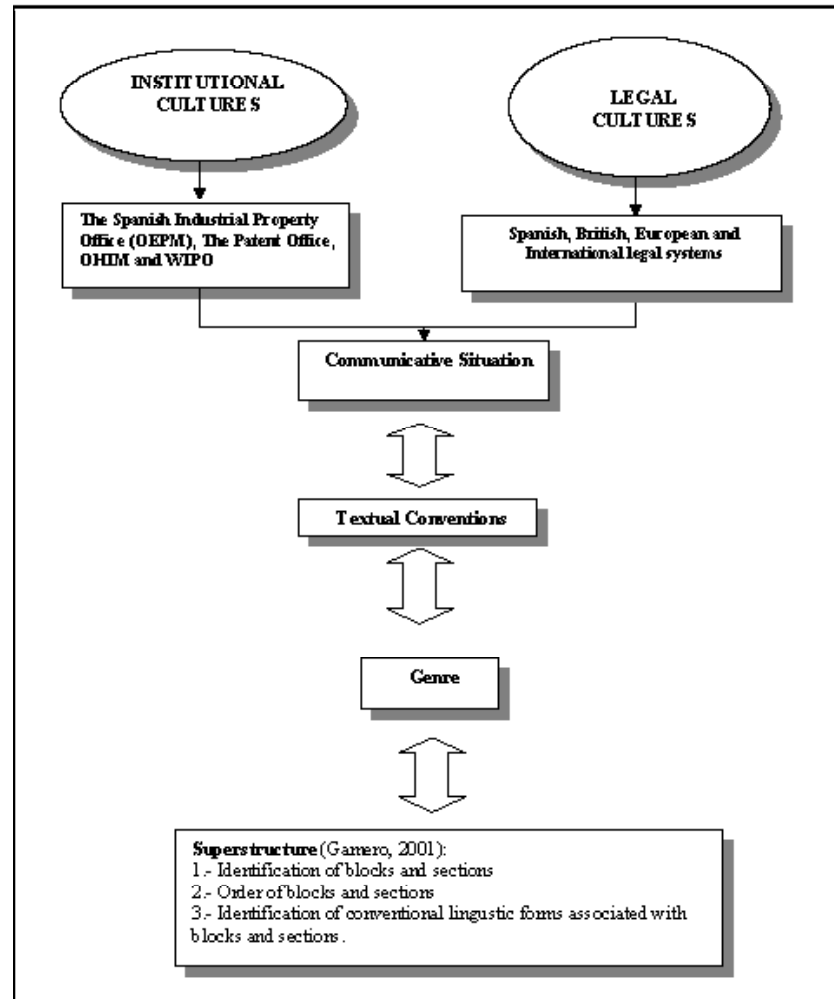
As for the notion of *institutional cultures*, we refer to the constraints imposed, both from the textual and the format point of view, by the main institutions and organisations involved in industrial property law, that is, the Spanish Industrial Property Office, (*Oficina Española de Patentes y Marcas*), the British Patent Office, the Office for the Harmonisation of the Internal Market, (OHIM) and the World Intellectual Property Organisation, (WIPO). As a result, the *communicative situation*, in which the translation of a given genre takes place, is determined by these two different cultures and, consequently, textual conventions are also pretty much influenced. This last point is particularly significant, especially if we take into account the fact that the main receivers of these genres are, depending on the communicative situation, the applicant, the trade mark agent or the own institution, whether national, international or European.

The notion of *textual conventions* has been studied by all the authors mentioned before and for all of them this concept is related to or imply conformity and expectation on the part of the target culture. In terms of Lvovskaya (2002), based on Lewis' work, textual conventions are defined, from the sociological and sociolinguistical point of view as the regularity in a conduct R among the members of a group G, that participate in situation S in a recurrent way:

La regularidad de una conducta R de los miembros de un grupo G, que participan en una situación S recurrente, es una convención, si y sólo si cada vez que sucede S, los miembros de G: (1) obedecen casi todos a R; (2) casi todos prefieren conducirse según R, si los demás también lo hacen, porque (S) constituye un problema de coordinación, y la obediencia general a R en S produce un equilibrio coordinado (Lewis, 1975:78).

Taking into account all the notions mentioned above, we would like to propose our particular model for the analysis of textual conventions of the different genres involved in the registration process of a trade mark in Spain and the United Kingdom. The model we propose is presented in the following table:





## 5. Analysis

With this model in mind, the analysis of the superstructure of these two documents, the English one and the Spanish one, is presented in the following tables below:

## Identification of blocks and sections of registration certificate of a trade mark

### Document 1: Registration Certificate of trade mark in Spain

1.- Coat of arms of the Spanish Ministry of Science and Technology
2.- Name of the institution issuing the document: <i>Oficina Española de Patentes y Marcas</i> (OEPM)
3.- Type of document: <i>Título de concesión de marca</i>
4.- Trade mark Number
5.- There appears a separate text, the so called <i>declaración de registro</i> structured in three paragraphs. This text has three items of information: <ol style="list-style-type: none"> <li>1. The fact that the trade mark has been registered in accordance with the legislation in force and with the features specified in the annexed document</li> <li>2. The rights conferred to the trade mark holder and for how long</li> <li>3. It warns the trade mark holder about the consequences if the trade mark is not renewed</li> </ol>
6.- Date
7.- Signature of Head of Trade Marks Department
8.- Stamp

The annexed document appearing with the registration certificate is the so called *Hoja de reproducción y datos de la marca* and its blocks and sections of information are the following:

1.- Trade Mark Number
2.- Trade Mark holder
3.- Representation of the trade mark
4.- Details of national trade mark 4.1.- Date of filing 4.2.- Date of registration
5.- National trade mark granted by transformation 5.1.- Trade mark of origin and number 5.2.- Date of filing in the country of origin 5.3.- Date of filing in Spain 5.4.- Date of registration in Spain 5.5.- Seniority: Number of Spanish trade mark 5.6.- Date of seniority
6.- Priority: 6.1.- Country 6.2.- Trade mark number 6.3.- Date of priority
7.- Description (optional)
8.- List of goods or services 8.1.- Class(es)
9.- Signature of civil servant
10.- Stamp

## Document 2: Registration certificate in the United Kingdom

1.- Body issuing the certificate
2.- National emblem stating: The Patent Office
3.- Type of document: <i>Registration certificate</i>
4.- Reference to the legislation in force and by which the certificate is issued: <i>Trade Marks Act 1994 of Great Britain and Northern Ireland</i>
5.- Trade Mark number
6.- Date of registration
7.- Representation of the Trade Mark
8.- List of goods and services 8.1.- Class(es)
9.- Name of trade mark holder
10.- Date and signature of Director of The Patent Office

By simply looking at the genres and examining the main blocks and sections of information (Gamero, 2001), we got to know the superstructure of these two parallel texts. From this analysis, it is clear that the Spanish genre is composed of two different texts. The first one is a declaration made by the Spanish Industrial Property Office (*Oficina Española de Patentes y Marcas*) in which the applicant is informed about the registration of the trade mark, the rights conferred to the holder by such a registration and the need to renew the trade mark after a ten-year period.

The second genre, the English one, on the contrary, consists in one text much simpler and easy-to read. We observe a clear and remarked linearity in this text as opposed to the Spanish text, where we have found clear digressions and a text that is more content-oriented. These two concepts were already studied by Clyne (1981, 1994) when analysing English and German academic texts and he observed that English academic texts are linear in their organisation, whereas German texts are more digressive. After the analysis of all the documents compiled in our corpus, we came to the same conclusion, that is, that English texts, even in the legal domain, tend to be simple and linear in their structure, whereas the Spanish texts are more content-oriented, digressive and with a more complex structure. The documents we analyse in this paper is a clear example.

Once we have established the main blocks and sections of information we would like to see the frequency with which these blocks and sections appear in the documents. The results of this analysis of frequency is illustrated in the following table:

<b>BLOCKS AND SECTIONS</b>	<b>Spanish Industrial Property Office (OEPM)</b>	<b>The Patent Office</b>
<b>Details of entity</b>	×	×
<b>Type of document</b>	×	×
<b>Trade Mark number</b>	×	×
<b>Document stating the registration of the trade mark</b>	×	
<b>Name of trade mark holder</b>	×	×
<b>Representation of the trade mark</b>	×	×
<b>Date of filing of registration or basic application</b>	×	×
<b>Date of granting</b>	×	×
<b>Date of priority</b>	×	
<b>Trade Mark transformed</b>	×	
<b>Description of trade mark</b>	×	
<b>List of goods and services</b>	×	×
<b>Signatures</b>	×	×
<b>Stamps</b>	×	×

<b>Frequency of blocks and sections</b>	<b>In 100% of Spanish texts analysed</b>	<b>In 100% of British texts analysed</b>
<b>Details of entity</b>	×	×
<b>Type of document</b>	×	×
<b>Trade Mark number</b>	×	×
<b>Document stating the registration of the trade mark</b>	×	
<b>Name of trade mark holder</b>	×	×
<b>Representation of the trade mark</b>	×	×
<b>Date of filing of registration or basic application</b>	×	×
<b>Date of granting</b>	×	×
<b>Date of priority</b>	×	
<b>Trade Mark transformed</b>	×	

<b>Description of trade mark</b>	×	
<b>List of goods and services</b>	×	×
<b>Signatures</b>	×	×
<b>Stamps</b>	×	×

In accordance with the data appearing in the previous tables, it is clear that there are more sections and blocks of information in the Spanish text than in the English one. We refer especially to the date of priority, the details of the transformed trade mark, the description of such a trade mark and the declaration made by the Spanish Industrial Property Office. This kind of knowledge is extremely useful for the translator, in the sense that the expectations of the target culture can be met more easily and, at the same time, the quality of the translation can be highly improved. This finding becomes even more important if we take into account the fact that all the texts compiled in our corpus present a high level of standardisation. This enables the translator to find parallel solutions for the translation problems encountered when dealing with this type of texts.

Moreover, this analysis allows us to realise that, national legislation together with institutional textual constraints play an important role in the superstructure of the documents as well as in their content. That is one of the reasons why the texts do not share a common structure. Another reason for this is the fact that the blocks and sections of information within the texts do not appear in the same order and the kind of blocks of information is not the same, either in quality or in quantity. This finding makes it more difficult to reduce each document to a prototypical superstructure.

After this analyses we see that, there is no single prototypical superstructure, except for the application to register a trade mark for the Spanish and the British documents; what we find instead is that, despite the harmonisation of the different national legislations in the field of trade marks law, the documents still present culture-bound elements that characterise the Spanish and the British legal culture in general and trade marks legal systems in particular.

Another important aspect regarding the superstructure is the fact that this is a dynamic notion, that is, the superstructure changes as social, legal and institutional changes take place. We have found that textual

conventions have changed in Spanish and in British genres when a new law has been passed.

In addition, the degree of standardisation found in the texts varies from genre to genre. This means that, even if a marked tendency to standardisation has been observed, this standardisation is not a homogeneous phenomenon. Only one genre out of the 40 compiled is less standardised. The remaining 39 texts are more standardised but still with different levels of standardisation.

In the table below, we illustrate in a systematic way our findings, that is, the main features that characterise and differentiate these two genres within the Spanish and the British legal cultures. These features can be applied to the rest of the documents conforming the corpus of the 40 most frequently translated texts from the industrial property law field.

<b>Features of genre conventions</b>	<b>SPAIN</b>	<b>UNITED KINGDOM</b>
Digressions	√	
Linearity		√
Content	√	
Standardisation	√	√

## **6. Conclusions**

We would like to finish this paper by providing the reader with some reflections about the results found with this textual analysis based on the formal parameter of superstructure.

- First of all, we believe that intrinsic and automatic knowledge can be created in the mind of the translator by analysing the superstructure of original and parallel genres in different cultures. This automatic and intrinsic knowledge, which is essentially textual knowledge, can help the translator to recognise a specific text type by only looking at it in the same way we can recognise a commercial invoice or a cheque. As Kussmaul (1995) points out, the use of parallel and original genres could be used as an exercise with students to help them acquire this textual knowledge, for we cannot forget that sometimes the poor results in a translation derives from a lack of understanding of the original texts:

Contrastive studies of text types will be extremely useful for translation teaching, and we should encourage our students to work in this field in their (German) diploma, M.A. or Ph. D. theses. Once we know the specific conventions of text types we can use them as material for our syllabus (Kusssmaul, 1995: 75).

- Secondly, the analysis of texts by using the parameter of superstructure, that is the identification of the main blocks and sections of information, gives us the main textual conventions of a specific text type and within a specific language combination. In our case we have been able to distinguish the main differences as for textual conventions between English and Spanish texts and for a specific legal domain, that is, industrial property law. It is true that another approach with other textual parameters could have possibly been used. However, due to various reasons, not least the variety of genres involved in the registration process of a trade mark, together with the amount of genres make us select a top-down approach with a general textual parameter.
- Thirdly, our research has demonstrated the usefulness of creating textual corpora of original written texts in different language combinations as one of the most important documentary and analytical sources for the translator. Thus, the translator can use it as translation resource, since s/he can easily find solutions for the problems encountered in one particular text. Besides, with this kind of corpora the translator can considerably improve the quality of the translation, in the sense that the translator has enough information as to meet the target culture expectations. This goes in line with Kusssmaul's concept of textual conventions as a concept related to conformity and expectations on the part of the target receiver and/or culture.
- Even if the European Union tries to harmonise the different national legislations, including industrial property law, we have observed that, as far as documents are concerned, there are still culture-bound elements that directly affects the understanding of the texts, their formats and, therefore, probably the decisions that the translator takes to solve these problems. This fact demonstrates that culture, whether Spanish or British, still plays an important role in the creation of genres and, therefore, in the textual conventions.



- Finally, we would like to highlight the importance for the translator to have an appropriate knowledge of the textual conventions characterising a given text, of the legal context and the constraints imposed by certain national, European or international organisations, such as The Patent Office, the Office for the Harmonisation of the Internal Market (OHIM) or the Spanish Industrial Property Office. With this analysis we have observed that, in the case of industrial property documents, both legislation and institutional textual guidelines, directly affect the content and the internal organisation of the texts. We consider this textual knowledge as essential before actually being involved in the translation process.

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