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COMPARATIVE ANALYSIS AND TRANSLATION
OF INTELLECTUAL PROPERTY RIGHTS:

The framework contract for the provision of translation services
in the European Union

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CONTENTS

ABSTRACT	2
INTRODUCTION	3
1.1 Objectives.....	3
1.2 Rationale of the study.....	3
1.2.1 The Double Degree	4
1.3 Overview of the development of the study	4
1.3.1 Chapters outline	5
CHAPTER 1	6
1.1 Intellectual Property rights in European Law.....	6
1.1.1 The Berne Convention	8
1.2 Intellectual Property rights in Spanish Law	11
1.2.1 The Law on Intellectual Property.....	12
CHAPTER 2	17
2.1 Language for Specific Purposes (LSP)	17
2.1.1 Legal English in contracts	18
2.1.2 Legal Spanish in contracts.....	21
2.2 Specialized translation.....	24
2.2.1 Legal translation: a system-bound discipline	26
CHAPTER 3	29
3.1 The European Court of Justice translation service.....	29
3.2 Article 6: Intellectual Property rights.....	30
3.3 Translation.....	30
CHAPTER 4	39
4.1 Textual characteristics.....	39
4.2 Syntactical-grammatical characteristics	41
4.3 Lexical characteristics	43
4.4 Translational characteristics.....	44
4.5 Translating issues and solutions.....	45
RESULTS AND CONCLUSIONS	49
RESUMEN	51
RIASSUNTO	55
BIBLIOGRAPHY	57

ABSTRACT

This final thesis consists of a comparative analysis and translation of the article on Intellectual Property rights included in the framework contract for the provision of translation services in the European Union. The text in question belongs to the field of legal language in the subgenre of contracts. The first chapter provides an overview of Intellectual Property rights legislation in the European and Spanish legal systems, with special attention to translations. The second chapter deals with LSP and more specifically legal English and legal Spanish in contracts. Moreover, it deals with specialized legal translation and its relationship with Intellectual Property. The third and fourth chapters provide a practical analysis based on the theoretical knowledge previously acquired. They consist in the translation of the text and in its practical analysis through several aspects: textual, syntactic-grammatical, lexical and translational. At the very end of this thesis there is a section dedicated to the translating issues encountered and the solutions provided.

Key words: Intellectual Property rights, legal language, contract, specialized legal translation, translating issues.

INTRODUCTION

1.1 Objectives

The principal objectives of this final thesis are as follows:

1. Providing an overview of the legal contexts in question, which are the Spanish legal system and the European legal system, in terms of Intellectual Property protection;
2. Identifying the standing out features of legal English and legal Spanish in the specific domain of contracts and providing an analysis from several points of view (i.e. textual, syntactical-grammatical, lexical and translational);
3. Carrying out a translation from English to Spanish on Intellectual Property rights in the professional context of translators, who are direct recipients of such rights.

This study aims to provide a thorough and consistent analysis of Intellectual Property rights, in the belief that the awareness of this kind of rights is fundamental for every individual, author, artist and, especially in this case, translator. It is important to specify that this awareness should not be passive but should inspire future translators to be actively involved in the safeguard of their intellectual originality. Moreover, this thesis intends to be considered as reference for students and future translators who are interested in specialized languages, especially legal language, and in the field of Intellectual Property protection.

1.2 Rationale of the study

This thesis consists of a comparative analysis and translation of a contract for the provision of translation services. The text translated is part of the article on Intellectual Property rights and the choice of analysing it reflects the intention to deal with a very important issue for translators which is the safeguard of their intellectual originality. Indeed, as the world trade has grown, and international organizations have prospered, translators nowadays must face an always more interconnected reality among countries and, besides their academic preparation, they must be aware of foreign legislations. The specific definition of “Intellectual Property” will be addressed forward in section 2.2.1 of Chapter 2, but it is important to say that Intellectual Property rights have usually been a matter of national concerns, with national governments building their own legislation during the years. Nevertheless, over time, enforcement and protection of Intellectual

Property has become an international concern leading to the signing of several international agreements, such as the Berne Convention for the Protection of Literary and Artistic Works in 1886, to the establishment of organizations, such as the World Intellectual Property Organization (WIPO), and to the development of legislations which aim to unify and implement national legislations, as in the case of the European Union. According to the reasons above mentioned, the role of translators has become always more important and Intellectual Property has become a matter of international concern. Hence, being aware of the legislations in terms of protection of intellectual originality is fundamental, especially for future translators.

1.2.1 The Double Degree

This section aims to provide a few background information on the Double Degree program which represents a formative itinerary for foreign language students. It is a program organized by the Università degli Studi di Milano, Mediazione Linguistica e Culturale, and the Universidad de Valladolid, Estudios Ingleses, and it gives the students the possibility to develop theoretical and practical multidisciplinary skills that can be very useful in their professional future. The Double Degree program counts on the cooperation between the two esteemed universities in order to build an academic path which involves a theoretical learning of English language, with a specific focus on Anglo-Saxon cultures and societies, and a practical learning of the use of language, with a special focus on legal specialized translation between English and Spanish.

This final thesis reflects all the knowledge, academical and personal, acquired during the time spent at the host University and during all the three years of study, with the supervision and support of professors Maria Vittoria Calvi and María Belén López Arroyo. According to the program, Italian students spend 9 months at the host University in Valladolid and there they face challenges not only due to a completely new academic environment, but also due to the inclusion in a new culture and in a new society. In conclusion, this study aims to illustrate how the theoretical and practical knowledge acquired is significant to the academic preparation of future translators.

1.3 Overview of the development of the study

The development of this translation analysis went through several steps. First, the text was chosen and analysed in English from a linguistic point of view. The source text chosen is part of the article on Intellectual Property rights of the framework contract

for the provision of translation service of the European Union Court of Justice. Apart from a first linguistic analysis, it was carried out a research on the Court of Justice and its translation services aiming to gather a basic knowledge of the context. Then, the source text was translated into Spanish (target text) after a deep research on parallel texts and specialized terminology in the legal field. While translating, there were some sentences and some specific terms that raised translating issues that will be addressed afterwards in this paper (see Chapter 4). Finally, this kind of translation study required a research on the theoretical aspects of legal language in contracts in both English and Spanish and on the two legal contexts took in consideration in terms of Intellectual Property protection.

1.3.1 Chapters outline

The *first chapter* presents a comparative analysis of the theoretical aspects related to the context of this study. It provides a comparative overview of the legislation on Intellectual Property rights in the European Union and in Spain.

The *second chapter* introduces the theoretical framework of the field. First, it provides the definition of Language for Specific Purposes (LSP) with a special focus on the legal language in contracts. The linguistic analysis of legal language within contracts includes both English and Spanish perspectives. Finally, it deals with specialized translation with a focus on legal translation as a system-bound discipline and its relationship with Intellectual Property rights.

The *third chapter* includes the translation between English and Spanish, introduced by a brief introduction about the article of the contract in question and about the Court of Justice of the European Union and its translation service.

The *fourth chapter* goes through a practical linguistic analysis on several aspects. First, it deals with the textual, syntactical-grammatical and lexical features of the source text. Then, it provides an explanation of translational characteristics together with some examples of translating issues found and solutions applied.

Finally, the reader is provided with results and conclusions and with the bibliography. A CD-ROM includes the Appendices with the fundamental tools used: the full source text, parallel texts and a terminology record of the most relevant terms of the field.

CHAPTER 1

Before going into the details of this Chapter, it is important to make a few preliminary considerations. First, Intellectual Property rights are subject to a wide range of legal sources of protection and are regulated at three levels: international, European and national. According to the European Commission Study on Translation and Multilingualism (2014), most countries have signed international agreements, and, in addition, they provide protection through European Directives and national legislation. Hence, for practical reasons and because law is not the main focus of this final thesis, this Chapter intends to provide general dispositions on Intellectual Property rights protection in two different legal contexts with a special focus on the notions and concepts which can be useful for this analysis.

1.1 Intellectual Property rights in European Law

Sources of law

The Court of Justice of the European Union (CJEU) has declared the principle of *territoriality* on copyright. This means that national laws can only regulate matters within their national borders. In this regard, it is important to say that the safeguard of Intellectual Protection rights depends on each state directly, but in the framework of the European Union there is a set of Directives which aim to harmonize all Member States Laws.

Before focusing on the European Union, it is fundamental to mention some of the most important international treaties on Intellectual Property rights. First, the *Berne Convention for the Protection of Literary and Artistic Works* of 9 September 1886 which is administered by the World Intellectual Property Organization (WIPO). It stands out as the first and the most important tool for Intellectual Property right protection all over the world. It is an important legal source, if not the most important, when considering the protection of translations and of derivative works in general. Indeed, this Convention refers explicitly to the protection of translations of official texts of a legislative, administrative and legal nature (article 2).

Other important international agreements are as follows: The *Universal Copyright Convention* (1952) administered by the United Nations Educational,

Scientific and Cultural Organization (UNESCO), the *Agreement on Trade-Related Aspects of Intellectual Property Rights* ("TRIPS Agreement") adopted in 1994 and administered by the World Trade Organization (WTO) and the *World Copyright Treaty* adopted in 1996 by WIPO. The purpose of the first one is to ensure multilateral relations between countries of the Berne Union, the aim of the second one is to introduce Intellectual Property rights in the international trade system while the third one aims to provide further protection necessary due to the development of technologies (computer programs, databases).

As mentioned above, there are many international agreements, but it can be asserted that, in the European context, such rights are firstly declared in the *Charter of Fundamental Rights of the European Union* (2000/C 364/01) in article 17: "Intellectual Property shall be protected". The WIPO database provides a large range of documents that deal with Intellectual Property rights, but it is important to mention the most relevant and recent laws. The European legal sources have the purpose to harmonize all the Member States laws but there is not an instrument that is able to fully harmonize all the legislations nor that specifically addresses the issue of translations in the European Union. As a result, the international agreements mentioned constitute the fundamental basis for the European Law on Intellectual Property rights. The most important European Directives which can be considered legal sources are as follows:

1. The *InfoSoc Directive 2001/29/EC* of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society. Its principal purpose is to transfer into European Law the main international obligations arising from the *World Copyright Treaty*. According to articles 2 and 4 it requires Member States to implement a set of economic rights such as: reproduction, distribution and communication to the public.

2. The *Enforcement Directive 2004/48/EC* of the European Parliament and of the Council of 29 April 2004 stands out as the most important Directive on the implementation and enforcement of such rights. This Directive implements the *TRIPS Agreement* and its main objective is to ensure a "high, equivalent and homogeneous level of protection in the Internal Market" (Directive 2004/48/CE). On this regard, I would like to cite the 2nd point of Directive 2004/48/EC:

(2) The protection of intellectual property should allow the inventor or creator to derive a legitimate profit from his invention or creation. It should also allow the widest possible dissemination of works, ideas and new know-how. At the same time, it should not hamper freedom of expression, the free movement of information, or the protection of personal data, including on the Internet.

This passage highlights the importance of Intellectual Property rights protection for the correct spread of ideas and works. The competence of the EU on this subject comes from the need to unify all national legislations of Member States in order to avoid the decline of competitiveness and to enhance the development of the Internal Market.

3. In the scope of this thesis, it is also important to mention the *Database Directive 96/9/EC* of the European Parliament and of the Council of 11 March 1996 which regulates the legal protection of databases.

Finally, there are several judiciary cases of the Court of Justice of the European Union which have led an important role in harmonizing copyright and database rights by interpreting the Directives previously mentioned.

1.1.1 The Berne Convention

It is important to know that, in the European Union framework, there is not a unique legal source text that regulates Intellectual Property rights. Indeed, EU Directives do not provide a list of protected works, but refer to the list presented by article 2 of the *Berne Convention*:

Article 2:

1. "Literary and artistic works"; 2. Possible requirement of fixation; 3. Derivative works; 4. Official texts; 5. Collections; 6. Obligation to protect; beneficiaries of protection; 7. Works of applied art and industrial designs; 8. News

(3) Translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the copyright in the original work.

(4) It shall be a matter for legislation in the countries of the Union to determine the protection to be granted to official texts of a legislative, administrative and legal nature, and to official translations of such texts.

The points above mentioned show how derivative works such as translations are considered protected works. Point 2.4, especially, states that the determination of protection of official texts and their translations is a national matter. Hence, it is clear that in the current European legal framework there is no full harmonisation in this

regard. The most important legal source on the matter is the *Berne Convention* (article 8), which provides the owners of an intellectual work with the exclusive right to authorize translations of their works. As a result, according to the European Commission Study on Translation and Multilingualism (2014), “in order to exploit any translation, authorisation must be obtained from the original owner of the rights on and to the source document in the source language and from the owner of the rights on and to the translation in the other language”. In conclusion, translations are recognized by the European Union as derivative works, but they are not strictly regulated by any Directive. Instead, Directives make direct reference to the *Berne Convention*.

In the field of translation, the European legal framework does not address the definition of “originality”. As a result, this concept is addressed by many judiciary cases of the Court of Justice of the European Union (CJEU). According to some CJEU judgements it is possible to affirm that the length of a work is not a determining factor in the originality criterion and that the major originality factor is related to author’s work intended as a work which reflects authors’ creative ability. For instance, within the judgment “Infopaq International A/S v Danske Dagblades Forening” (Infopaq I) the Court states:

"regarding the elements of such works covered by the protection, it should be observed that they consist of words which, considered in isolation, are not as such an intellectual creation of the author who employs them. It is only through the choice, sequence and combination of those words that the author may express his creativity in an original manner and achieve a result which is an intellectual creation [...]”.

In the case of translations, this concept can be found in the “re-creation” of the original work in another language. Obviously, the room for creativity will depend on the original text and on the type of translation. In the case of legal translation, it can be asserted that there is less intellectual originality than in a literary work, which would imply a greater conceptual and cultural elaboration, but it certainly implies a higher level of intellectual originality than a scientific work, which leaves little room for interpretation. As mentioned in Chapter 2, legal discourse stands in a very special position because of its complexity and because of its close bound to the legal system of a country. This means that in the case of legal translations, translators make a great effort to interpret and translate concepts from the legal system of the Source Language

to the legal system of the Target Language. Anyway, this matter differs from country to country and would need further analysis which will not be undertaken in this study.

Moral and economic rights

The text translated in Chapter 3 deals with the ownership of rights, the licensing of rights on pre-existing materials and the exclusive rights on translations. Hence, it is fundamental to say that the concept of authorship, with all the related moral rights, lacks specific regulations at the European level and it is mainly regulated by national legislations and by international agreements. For this reason, it is fundamental to stipulate contracts between two parties in order to agree the conditions of the transfer of moral rights. It is worth mentioning the article 6bis of the *Berne Convention* which can be considered a point of reference for European Union law:

(1) Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honour or reputation.

(2) The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the country where protection is claimed [...].

(3) The means of redress for safeguarding the rights granted by this Article shall be governed by the legislation of the country where protection is claimed.

For what regards economic rights, the *Berne Convention* and the *World Copyright Treaty* stand out as major sources of law in the international landscape. Referring to the *Berne Convention*, reproduction and adaptation are regulated by article 9 and 12, whereas article 11 deals with broadcasting and communication to the public. In the two first articles, the *Berne Convention* states as follows:

Article 9

(1) Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of these works, in any manner or form.

(2) It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.

(3) Any sound or visual recording shall be considered as a reproduction for the purposes of this Convention.

Article 12

Authors of literary or artistic works shall enjoy the exclusive right of authorizing adaptations, arrangements and other alterations of their works.

Most of the provisions on economic rights are implemented and harmonized by the following European Directives: Directive *2006/115* on rental and lending rights and *Directive 2001/29* (InfoSoc Directive) on three economic rights: reproduction (article 2), communication to the public (article 3) and distribution (article 4).

Finally, it is worth mentioning the *Commission Decision (2011/833/EU)* on the reuse of Commission documents. This Decision is relevant to this study because it includes some definitions of terms included in the text translated in Chapter 3. Indeed, the framework contract translated makes use of some terms appointing their definition as stated in the Decision.

In conclusion, the European Union legal framework on Intellectual Property rights is mainly based on international agreements. The intent of European Directives is to implement the rights established by those agreements and to harmonize all Member States' legislations. It must be said that the European Commission plays an important role in the safeguard of Intellectual Property rights because it aims to supervise Member States' legislations and to discourage falsification and piracy. Having an always more harmonized regulation permits to lessen the differences among Member States and to guarantee the development of new creations at the European level.

1.2 Intellectual Property rights in Spanish Law

Sources of law

According to Colmenares Soto, Assistant Director-General for Intellectual Property in 2003: "Intellectual Property has a private nature" but "it exists a close relation between new creations, and the rights entitled to authors, and culture, its enrichment, and the freedom of expression and creation" (2003: 5). Hence, it can be affirmed that there is a tendency to the public intervention of the State and the legislator must determine the rights entitled to authors.

The Spanish legal system is based on the Constitution, which was approved on 6th December 1978. The *Spanish Constitution* appoints Intellectual Property rights in section 149, stating all the exclusive competences of the State among which the competence on intellectual and industrial property (section 1.9a). The *Spanish Civil Code*, in sections 428 and 429, refers to Intellectual Property rights and states that they must be regulated by a Special Law: The *Law on Intellectual Property*. Anyway, the *Civil Code* should stand as legal reference in those cases not regulated by this Law. In addition, Royal Decree-Laws are approved by the government in urgent situations, but they require the approval of the legislative body in a prompt time. Royal Decree-Laws represent an important source because their purpose is to make amendments and to implement and integrate European Directives.

Spain has ratified many treaties and international agreements on the matter, from the *Berne Convention for the Protection of Literary and Artistic Works*, ratified in 1887, to the *Patent Law Treaty* ratified in 2013. Hence, the safeguard of Intellectual Property rights is based on a national level but considering all the international agreements ratified. Most importantly, Spain is part of the European Union since 1986 and it must implement and integrate European Decisions and Directives issued on Intellectual Property rights protection.

The most important body of law in Spanish framework is the *Intellectual Property Code* which includes all the Laws and Directives issued related to the rights in question in different fields. In the scope of this thesis, the intellectual protection of translations, I will mention some sections included in the Consolidated Text of the *Law on Intellectual Property* as it stands out as the fundamental basis of all Laws issued on Intellectual Property rights. The Consolidated Text was originally approved by the *Royal Decree-Law N° 1/1996*, on 12th April 1996, and it has recently been modified by the *Royal Decree-Law N°2/2018*, on 13th April 2018. This Royal Decree-Law also incorporates the last European Directives on the matter which are: *Directive 2014/26/EU* and *Directive 2017/1564*.

1.2.1 The Law on Intellectual Property

The main functions of the Consolidated Text of the *Law on Intellectual Property* are as follows:

- Providing the existing law and all the Applicable Statutory Provisions on Intellectual Property rights;
- Regulating, clarifying and harmonizing all the combined texts on the subject;
- Implementing the legal mandate as Annex to the *Royal Decree-Law No2/2018*.

The focus of this paragraph will be on some sections included in the first chapters of the Law which mainly deal with general dispositions on copyright such as: subject, object, contents, duration and limitations and transfer of rights. In particular, I will focus on the definition of Intellectual Property rights and on the definition of derivative works (translations). It is important to know that Spanish legislation on Intellectual Property rights has developed in line with European Directives and, as stated above, the European legislative framework on the matter implements the rules of protection established by international agreements such as the *Berne Convention*. Hence, notwithstanding the room for manoeuvre of national legislation, Spanish Laws must consider European Directives and be in line with them.

The first two sections of the Law represent the conceptual nucleus of Intellectual Property rights, as they explain that an intellectual creation of any kind is considered worth of legal protection and that authors are entitled with moral and economic rights that they can exploit as they wish. These sections state as follows:

Artículo 1. Hecho generador [Section 1. Operating event]

La propiedad intelectual de una obra literaria, artística o científica corresponde al autor por el solo hecho de su creación. [The Intellectual property of an artistic, literary or scientific work is owned by the author by the mere fact of its creation] (our translation).

Artículo 2. Contenido. [Section 2. Content]

La propiedad intelectual está integrada por derechos de carácter personal y patrimonial, que atribuyen al autor la plena disposición y el derecho exclusivo a la explotación de la obra, sin más limitaciones que las establecidas en la Ley. [Intellectual Property includes moral and economic rights which entitle the author with full use and with the right of exploitation of the work, with no limitations other than those established by the Law] (our translation).

An original intellectual creation can be the basis for further intellectual derivative works. In this regard, it is fundamental to mention section 11, included in the “objective” section of the Law:

Artículo 11. Obras derivadas [Section 11. Derivative Works]

Sin perjuicio de los derechos de autor sobre la obra original, también son objeto de propiedad intelectual: 1. Las traducciones y adaptaciones, 2. Las revisiones, actualizaciones y anotaciones, 3. Los compendios, resúmenes y extractos, 4. Los arreglos musicales, 5. Cualesquiera transformaciones de una obra literaria, artística o científica.

[Notwithstanding the copyright on the original work, Intellectual Property rights also include: 1. Translations and adaptations, 2. Revisions, updates and annotations, 3. Compendium, summaries and extracts, 4. Musical arrangements, 5. Whichever transformation of an artistic, literary and scientific work] (our translation).

According to this section, translations are considered derivative works as they certainly require an intellectual effort, but they do not imply the same level of originality as the original work. Hence, it is recognized by Spanish law that the effort implied by the translation operation, between the original work and the derivative work, is equally worth of protection. The characterization of translations as intellectual works requires the previous definition of the concept of “intellectual work”. The most important thing related to this concept is that language is considered the mean of expression of authors’ intellectual originality. As already mentioned, the type of language employed in the original work will determine the level of originality of the derivative work. Anyway, the “originality” concept will not be further analysed in this study.

Moral and economic rights

The author of an intellectual creation is entitled with a series of moral rights. These rights are listed in article 14 of the *Law on Intellectual Property* and they are all linked with the moral recognition of the author as authority on the work and with the moral rights to dispose, use and exploit its own work. This concept demonstrates that Spanish legislation on this matter is in line with the *Berne Convention*. In the case of translations, the fundamental moral rights are safeguarded as well but it is important to mention the concept of transfer of rights which is not regulated by the European Law and it is considered a national matter. The sections of the *Law on Intellectual Property* which deal with the exclusive and non-exclusive transfer of rights explicitly state that the type of transfer of rights should be included in a formal contract. As a result, it can be asserted that Spanish law says that the entity and modality of transfer of rights should be agreed in a contract between the parties (section 45). Indeed, in the text translated below in Chapter 3, the ownership of rights is exclusively entitled to the European

Union whereas the rights on pre-existing materials are licenced, and not exclusively transferred, to the European Union under the payment of fees.

The text translated in this thesis also deals with economic rights such as: reproduction, distribution, communication to the public or transformation (*Derechos de Explotación*). In this regard, section 21 refers to the transformation of works into translations and to their exploitation:

Artículo 21. Transformación. [Section 21. Transformation]

1. La transformación de una obra comprende su traducción, adaptación y cualquier otra modificación en su forma de la que se derive una obra diferente. Cuando se trate de una base de datos a la que hace referencia el artículo 12 de la presente Ley se considerará también transformación, la reordenación de la misma.

[1. Transformation of a work consists in its translation, adaptation, and any other modification on the form which derive in a different work. In case of presence of a database, which is addressed in section 12 of this Law, the reorganisation of the database is considered as transformation] (our translation).

2. Los derechos de propiedad intelectual de la obra resultado de la transformación corresponderán al autor de esta última, sin perjuicio del derecho del autor de la obra preexistente de autorizar, durante todo el plazo de protección de sus derechos sobre ésta, la explotación de esos resultados en cualquier forma y en especial mediante su reproducción, distribución, comunicación pública o nueva transformación.

[2. Intellectual Property rights of the work deriving from the transformation will be entitled to the author of the transformation, subject to the right of the author of the pre-existent work to authorize, during all the period of protection of rights on it, the exploitation of these results in any way and especially through its reproduction, distribution, communication to the public or new transformation] (our translation).

All these rights are more deeply regulated throughout all the dispositions, but this thesis' aim is not to provide a thorough legal analysis. Anyway, it is important to say that section 21.1 mentions databases, which represent an important element included in the exclusive rights of the text translated and which is regulated by the European *Database Directive 96/9/EC*.

In conclusion, it can be asserted that Spanish Law provides a very wide range of sources on the safeguard of Intellectual Property rights, but it is mainly regulated by the Consolidated Text of the *Law on Intellectual Property* (1996) which intends to harmonize and unify all the laws issued on the matter. Throughout the years, Spanish Law has been amended to integrate the provisions included in European Directives.

This shows how the European Union legal framework has progressively developed a significant impact on Spanish legislation. Indeed, the sections of the *Law on Intellectual Property* implement the dispositions included in *the Berne Convention* previously mentioned and recognize translations as derivative works worth of protection.

CHAPTER 2

The aim of this Chapter is to provide the theoretical framework of this study. First, the legal language of contracts is considered a Language for Specific Purposes (LSP). For this reason, it is important to provide the definition of LSP and to present an overview of the most relevant linguistic features of legal language in the subgenre of contracts both in English and Spanish. In addition, the last part of this Chapter will provide a description of specialized translation with a particular attention to legal translation and its relationship with Intellectual Property.

2.1 Language for Specific Purposes (LSP)

The definition of *Language for Specific Purposes* (LSP), or *Specialized Language*, has always been a debated issue and even nowadays we are far from reaching a consensus. In fact, there is not an exact denomination, but it is commonly agreed that we are talking about some specific languages that are used in professional contexts and for professional purposes. These professional contexts could be, for example: science, economics, law, etc. Calvi states: “these languages are based in the phonetic, grammatical and lexical structures of natural language and they are characterized by the creation of a unique terminology, as well as the orientation to certain kinds of grammatical and discursive structures” (2015:15). Hence, these specialized languages represent the set of knowledge of a certain expert community and they are characterized by their own specific lexis.

It is important to say that Palmer (1932) was the one who carried out the first studies, but the true systematic study began with the first conference on *Languages for Special Purposes* in 1968, which soon became *Specific Purposes*. That conference initiated the development of studying and teaching languages with specific purposes (Calvi 2015: 17-18). There are different views expressed by intellectuals such as Harris (1968) or Lehrberger (1982), who considered specialized languages as sublanguages because “they are made up by a limited range of units and syntactical structures of general language”. Finally, there are others, such as Hoffman (1979) and Herat (1997), who “think that specialized languages are linguistic codes with different rules with respect to general language” (López Arroyo 2001: 40. cited in Álvarez García 2011: 281). Despite all these different definitions, all LSP are in constant development and English plays a very important role in this continuous change. English language is

considered the world's *lingua franca* and it is increasingly influencing other languages in terminology and syntax.

As the text translated in this study belongs to a contract for the provision of translation services, I will analyse legal language as example of LSP and, more specifically, legal language within contracts. For this reason, in subsections 2.1.1 and 2.1.2 there will be a focus on legal English and on legal Spanish respectively, with a special attention to the peculiar characteristics of the language of contracts.

2.1.1 Legal English in contracts

As already mentioned, nowadays English is the most widely spoken language all over the world. Legal English is considered an LSP, but it stands out in a unique position thanks to its pragmatic nature. According to Garzone:

“The Common Law legal rule is one which seeks to provide the solution to a trial rather than formulate a general rule of conduct for future. It is, then, much less abstract than the characteristic legal rule of the Romano-Germanic family, where the rules of law are conceived as rules of conduct intimately linked to ideas of justice and morality” (Garzone 2003:4)

Indeed, the Common Law legal framework is based on judiciary cases and it is considered a judge-made law system (Gibbons 1994: 16). As a result, legal English theoretical basis is very different from other languages such as Italian or Spanish, which are based on a written legal system of law. Legal English is characterized by being an obscure and complex language and when it comes to contracts it is highly technical and formal. In this regard, pressure groups and lawyers have founded the “Plain English Campaign” which aims to make legalese (the language used by lawyers in legal documents) more clear and transparent so that also ordinary people can understand it. Indeed, the technicalities of legal vocabulary represent a serious challenge to ordinary people and to translators (Alcaraz Varó 2014b: 15). The following description will provide the main characteristics of legal English from a stylistic, terminological and syntactical point of view, with a special attention to its peculiarities in the subgenre of contracts. All the examples hereinafter provided are taken from our source contract (Appendix 1).

From a stylistic point of view, legal language, especially within contracts, is characterized by the repetition of linguistic formulas such as “subject + shall + verb”:

“*This framework contract shall take effect from the last date of signature by a contracting party. [...] Once that period has elapsed, the provisions of the framework contract shall continue to apply to order forms which have previously been issued and to corresponding work assignments not yet completed*”.

These repetitions are useful in order to clarify concepts and subjects and this demonstrates how the characteristic obscurity of legal language is not as marked in contracts as in other legal texts. By contrast, punctuation is almost absent and often sentences result to be long and complex as in the previous example. Another important stylistic device is the use of performative verbs, such as: “The contractor *commits to comply* with applicable obligations [...]”. They provide a sense of carrying out the actions expressed in words and they are very common in contracts. Moreover, there is a great tendency to nominalization, which usually consists in the creation of noun or noun phrases starting from verbs, adjectives or other nouns, that produces a sense of poor dynamic of the discourse: “*Before any payment is made*, the authorising authority shall establish that the work delivered has been carried out in accordance with the order form [...]”. Thanks to this strategy, this type of language tends to provide a sense of impersonality and objectivity.

According to Veretina-Chiriac (2012) legal English terminology is characterized by the following features:

- 1) Technical terms, which are strictly related to law and can be one-word units (“without prejudice to real or actual *liability* incurred in relation to this *contract* or the contracting authority’s right to terminate the contract”) or compound units (“This work will be carried out *within a reasonable time period* and there will be no *additional remuneration*”);
- 2) Semi-technical terms which come from the common language and acquire additional meaning in the legal field by the process of analogy (“Any specific work offered under this framework contract will be the subject of an order form *issued* by the Court”). This is an example of a term which is polysemic because it presents several meanings in the common language and acquires new meanings in the legal field. In this case it means: “to produce or provide something official”¹;

¹ Cambridge Dictionary: <https://bit.ly/2qOR5FC>

- 3) Archaisms which can also be called “legalisms” or “lawyerisms” as they are typical of legal texts and contribute to the sense of opacity: “Any order for specific work will *be subject to the condition* that the contractor *give prior notice* of bank data by means of a certificate or statement issued by the institution where the bank account to be used is held”;
- 4) Foreign words: there is a widespread presence of Latin and French words. Their transformation into English can be either with the process of direct borrowing or with transliteration. This sentence gives a few examples of terms with Latin and French origin: “the *Court* reserves the right to claim *compensation* or to bring *legal* proceedings in respect of any *damage* it may sustain [...]”.
- 5) Synonymy: there is a great abundance in synonyms (“the contracting authority is exempt from all *taxes* and *duties*”) which might implicate translation issues;
- 6) Binomials: synonym pairs which are linked by a conjunction and reflect the necessity to be extremely precise and to avoid lexical ambiguity such as: “The contractor shall waive his own *terms and conditions* of contract.”. They can also be called “doublets” or “triplets” and in such cases the better translation strategy is at translators’ discretion.

Finally, according to Alcaraz Varó (2014b) the most relevant syntactical features are as follows:

- 1) Abundant use of the passive form of the verb, especially when meaning obligation or duties. This strategy intends to reduce the agent in his identity while emphasizing the action. This over use of passive forms contributes to the complexity of the discourse: “The onus is solely on the contractor to ascertain *the general conditions to be satisfied* in relation to the application of VAT to translation services [...]”;
- 2) Complex and long structure of sentences with subordinations and postponement of the verb until very late in the sentence, which contribute to a sense of obscurity and formality. For example:

“Where pre-existing materials are inserted in the translations, the contracting authority may accept reasonable restrictions impacting on the above list, provided that the said materials are easily identifiable and separable from the rest, that they do not correspond to substantial elements of the translations,

- and that, should the need arise, satisfactory replacement solutions exist, at no additional costs to the contracting authority”;
- 3) Conditionals and hypothetical formulations. Translators must pay great attention in complex conditions which may include mix positive and negative conditions (see the example above);
 - 4) Omission of personal pronouns in favour of the use of suffixes *-or* or *-ee* for legal relationships: “The *contractor* shall have the right of recourse at any time to the European Data Protection Supervisor”.

2.1.2 Legal Spanish in contracts

Legal Spanish makes part of the specialized language known as “español profesional y académico” (EPA) (Alcaraz Varó 2014a). This denomination refers to the fact that it is a specialized language used in professional and academic contexts. In recent years, Spanish has increased its power in the international landscape by being official language of the European Union and other international organizations (Alcaraz Varó 2014a: 16). The following description of the main characteristics of legal Spanish, will develop through different aspects, such as: style, terminology and syntax with a special attention, as in the case of legal English, to the peculiarities of the subgenre of contracts. All the examples below are taken from our translation or from parallel Spanish contracts for the provision of services (Appendix 2).

The first purpose of legal Spanish in contracts is giving the discourse a sense of impersonality and abstraction in order to focus the attention of the reader on the terms of the contract. For this reason, as in legal English, there is a great tendency to nominalization (“La no *aprobación* por parte del cliente del presupuesto modificado o ampliado no implicará la *resolución* del encargo ni de sus obligaciones derivadas tras la *aprobación* del presupuesto original”). The stylistic and semantic structure of legal texts is usually characterized by a high level of opacity and complexity. Anyway, in the case of contracts, as already mentioned for legal English, this opacity is not as strong as in judgments, for example. This may be due to the need of clear comprehension from both parties signing the contract. In the language of contracts is common to find the repetition of fixed structures that appear throughout the text such as: “*En el caso en que las traducciones sean, o incluyan materia susceptible de patente*”. The stylistic strategy of making continuous references is typical of a textual genre whose purpose is to set out

terms to which both parties must agree. Finally, it is important to mention the presence of fixed formulas with performative verbs such as: “Las partes *aceptan y pactan* expresamente que la comunicación vía email es un medio fehaciente[...]”.

After having mentioned the stylistic characteristics of legal Spanish in contracts, it is important to describe its terminology which is a fundamental feature as it separates legal language from common language. According to Alcaraz Varó (2014a) the terminology is characterised by:

- 1) Technical terms called “*tecnicismos*”. These highly technical terms are exclusive of the legal field, monosemic and fundamental in legal texts. An example of technical term is: “La Unión Europea adquiere irrevocablemente la *titularidad* internacional sobre las traducciones y sobre todos los derechos de propiedad intelectual contemplados en el contrato marco”. The term “*titularidad*” means: “*Propiedad de algo legalmente reconocido*”²;
- 2) Semi-technical terms coming from other semantic fields which acquire specific meanings in legal language. Indeed, these terms are polysemic because they acquire new meanings detectable through the context. An example is: “*licencia*” which generally means “*permiso para hacer algo*” but in the legal field means “*Autorización que se concede para explotar con fines industriales o comerciales una patente, marca o derecho*”³. For instance: La *licencia* de derechos preexistentes a la Unión Europea en el ámbito de este contrato marco cubre todos los territorios y tiene vigencia durante todo el plazo de protección de los derechos de propiedad intelectual”;
- 3) Different composition strategies such as: derivation (prefixes: “*des-, in-, pre-*” or suffixes: “*-idad, -ario, -ivo*”), present and past participles (“*-ante, -ado*”) and acronyms (often used to abbreviate the name of the parties in contracts). Here are some examples taken from Spanish contracts: “*presupuesto, preliminar, capacidad, titularidad, mandatario, encargado*”;
- 4) Great expressive redundancy in lexis which often results in using couple of terms which have the same meaning just to strengthen the concept (“*dobletes*”)

² Diccionario Real Academia Española (RAE): <http://dle.rae.es/?id=ZtnsSu7>

³ Diccionario Real Academia Española (RAE): <http://dle.rae.es/?id=NG6NB42>

such as: “La autoridad contratante podrá *explotar y usar* los derechos adquiridos como se dispone en este contrato marco”;

- 5) Spanish legal language presents two main terminological roots: classical and modern. The classical sources in contracts are mostly Latinisms. A few examples are: prefixes (“*subcontratista*”), pure Latinisms (“*ex novo*”) or borrowings such as “*autoridad*” in “[...] dicha *autoridad* puede solicitar que el contratista firme el acuerdo de licencia correspondiente”. Then, the modern sources are Anglicisms and Gallicisms. With the spread of English as *lingua franca* during the 20th and 21st centuries, Spanish language has started to include more English terms. For instance: “*database – base de datos*” as in the sentence: “En el caso de que las traducciones sean, o incluyan, una *base de datos*”. In the case of Gallicisms there is a frequent use of the preposition “*a*” and of derived terms such as “En el caso en que la *ejecución* del contrato marco requiera que el contratista utilice materiales preexistentes” (*ejecución – exécution*).

Always following the classification made by Alcaraz Varó (2014a) the most frequent syntactic features of legal Spanish are as follows:

- 1) Even if in legal Spanish there is a great use of gerund forms, probably due to external influences as the English verb form ending in *-ing*, the language of contracts differs. Instead, there is a great use of the deontic modality of the verb which express obligation through the obligation form of future: “El presente contrato *tendrá* una duración de x años (15 máximo) contados desde la fecha de la firma del contrato”, the present tense or expressions of obligation: “La empresa traductora *se compromete y obliga* a guardar estricta confidencialidad del contenido de la documentación traducida [...]”;
- 2) The so called “*ablativo absoluto*” which is a separated elliptic expression whose meaning depends on the rest of the sentence. For instance: “*Transcurrido un año de la entrega de la traducción*, la empresa traductora eliminará [...]”;
- 3) Sentences are characterized by long and complex structures such as the “*oración parrafo*” which is an extremely long sentence that makes comprehension more difficult. These sentences present syntactic ambiguity due to the syntactic order of terms, lack of punctuation and excessive use of subordination. For instance:

“En caso de disconformidad razonada del editor con la traducción entregada, el editor hará al traductor las indicaciones oportunas para la reforma de la traducción, señalándole un nuevo plazo de entrega acorde con las necesidades de la traducción, y si el traductor no realizase las modificaciones propuestas por el editor en dicho plazo, éste podrá resolver este contrato, quedando liberado de la obligación de efectuar el pago mediante devolución de la traducción al traductor, sin necesidad de otras formalidades y sin que nada más puedan reclamarse las partes por esta causa”.

- 4) The passive structures: 1. “*pasiva perifrástica*” which introduces the agent with the preposition “*por*” (Los Servicios *serán prestados por* el Contratista utilizando el equipo profesional que resulte necesario para hacer posible su cumplimiento en forma y plazo) and 2. “*pasiva refleja*” or with “*se*” which is useful to hide the agent and provide the effect of detachment and impersonality required by these texts (“*Se entenderá formalizado este contrato desde el momento en que el cliente acepte el presupuesto*”).

2.2 Specialized translation

A translation, apart from being a practical shift from a language to another, is characterized by the fact that it is an act of communication. According to Hurtado Albir:

El traductor debe considerar que no se trata de plasmar la cobertura lingüística sino las intenciones comunicativas que hay detrás de ella, teniendo en cuenta que cada lengua las expresa de una manera diferente y considerando las necesidades de los destinatarios y las características del encargo (Hurtado Albir 2017: 40-41). [The translator must consider that it is not about reflecting the language but the communicative intentions that lay behind it and that each language expresses them in a different way. He also must consider the recipient’s needs and the job’s characteristics] (our translation).

After 1993, in Europe, all the old barriers that prevented the free circulation of people and goods were abolished, and this initiated a process called “globalization”. The “globalization” process directly influences professionals, such as translators and linguistic mediators, as they must be prepared to a growing interrelated reality among countries (Álvarez García 2011: 280). That is why a good translator must develop a thorough knowledge not just of the language, but also of the specific field in which he is involved by doing a specialized translation. According to Hurtado Albir: “the translation of specialized texts is characterized by the dominating position of the field; therefore, the translator must have a theoretical knowledge of the field in order to be

able to translate” (2017: 61). Translation can be described according to two different axes: the horizontal axis and the vertical axis. The horizontal axis includes all the knowledge developed in a certain field and corresponds to an epistemological orientation. Instead, the vertical axis refers to the grade of specialization of texts (Mayoral Asensio 2007b).

With the expression “specialized translation” we refer to translation in a specific area of knowledge, which can be addressed to experts or to a wider range of public. For this reason, the most important function of specialized communication is informative, but, as stated by Adab (2008), specialized translators do not just have to pay attention to the accuracy of the information delivered, but they also must consider the transportation of textual structures and standards from the Source Language (SL) to the Target Language (TL).

“For specialized translation, the primary communicative function (cf Reiss 1984) is usually informative, as text producers seek to share information about the specialist domain of activity with others [...] However, in addition to accurate transfer of information content and correct use of terminology, the translator will need to understand how the information should be articulated in the target language” (Adab 2008: 14).

There are several fields which require a specialized translation such as: commercial, medical, scientific, computer, literary, legal etc. Translating a specific domain can be challenging and, as mentioned above, there is a need of theoretical preparation on each specific field. For instance, the culture specificity of a legal system and its operating principles may originate difficulties in finding equivalents in the TL. The issues related to specialized translation can be linguistic problems bound to the grammar or to the syntactic structure but can also depend on pragmatic problems (names of institutions or laws) or on intercultural differences such as the textual organization or the use of specific terms. Finally, specialized translation requires research approaches which can assure an accurate translation into the TL. In order to do that, translators may resort to examples of use in context. I will mention some helpful tools for specialized translation:

1. Parallel texts: corresponding original texts in different languages, which are very useful for the specific use and context of terms;

2. Terminology record: a glossary of the most relevant terms in the specific domain of the text which provides not only the definitions but also the use in context in both SL and TL;
3. Specialist corpora: collections of texts of a specific domain which can be useful for terminology research and text type conventions.

2.2.1 Legal translation: a system-bound discipline

Among all Languages for Specific Purposes (LSP), legal language has a special status due to its specific features and to its extremely specialized terminology. This type of specialized language stands in a quite complex position. This is due to the presence of a high level of specialization in legal discourse, and, even though legal texts are also addressed to citizens and not just to experts, it is widespread the need of a mediator, for example a lawyer, in order to understand very complex concepts or the terminology within them. Therefore, legal translation is considered a system-bound discipline and “this results in the problem of finding equivalents for culture-bound terms, particularly those related to concepts, procedures, institutions and personnel” (Harvey 2002: 180). In some instances, it is difficult to convey the exact same legal effect because the situations may be too much practical and may differ according to the context. Moreover, often there is an asymmetry among different legal systems and so translators must analyse different aspects and find the equivalent branches and fields of law in SL and TL (Harvey 2002: 178).

Legal translators usually deal with genres such as: laws, contracts, wills, judgments, agreements, etc. which require a deep knowledge of the legal context and procedures. It is important to say that each genre has different communicative functions according to the communicative situations and to the recipients of the text. According to Šarčević’s translation theory (1997), translation can be seen as a “cross-cultural event embedded in an act of communication”, for this reason a text can be translated in different ways according to different receivers. In the case of legal translation, the rule has always been extremely faithful to the source text and that meant the use of literal translation. Anyway, in recent years this rule has been a matter of debate among theorists because translation techniques and methods may vary according to text types, jurisdictions and receivers. In the scope of this thesis it is worth mentioning Koutsivitis’ opinion (translator at the EU commission) who believes that translators’ task is to

transfer the sense of the source text into the target text. Moreover, Koutivitis' opinion is shared by Pescatore who suggests that "the ideal translation for EU translators is one that reads as if it were drafted originally in that language" (Šarcevic 1997: 3). As a result, nowadays translators are no longer considered just mediators from a text to another, but producers of an independent text which is based on a receiver-oriented approach and which reflects the target legal system. For this reason, all parallel texts in multilingual environments should be considered equally authentic in meaning, effect and intent. This means that translations should achieve the legal effect in practice. Indeed, a legal translation, notwithstanding the translation techniques freely chosen by the translator, should always convey the same legal effect of the source text. In the case of contracts, for instance, the legal effect is put in practice by the will of the contracting parties. Therefore, according to Šarcevic (1997) it is possible to affirm that the main objective of legal translation is to produce parallel texts that can be interpreted uniformly by courts.

In conclusion, the greater difficulty of legal translation is to ensure that the source genre is correctly transposed to the target genre, which may present substantial differences, and, most importantly, that the target text reflect the purpose and legal effect of the source text (Scott 2017: 39). All the reasons above mentioned demonstrate that legal translation stands out as a very complex discipline and, moreover, that it requests translators to have a high level of preparation in the legal system in which they are translating.

Legal translation and its relationship with Intellectual Property

As mentioned above, it is important to highlight the fact that legal translators are considered as producers of independent texts and, as a result, they are right-holders in the field of Intellectual Property.

The concept of Intellectual Property can be explained by the following definition taken from the World Intellectual Property Organization (WIPO) Convention signed in 1967:

"Intellectual property" shall include the rights relating to: literary, artistic and scientific works; performances of performing artists, phonograms, and broadcasts; inventions in all fields of human endeavour; scientific discoveries; industrial designs; trademarks, service marks, and commercial names and designations; protection against unfair competition; and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields".

This definition applies to every new intellectual creation and, as Barrero claims: “a translator is an author. For this reason, he is entitled with moral and property-related intellectual rights recognized by the existing law on intellectual property” (2004: 267). As a matter of fact, this concept should not only be applied to legal translators but to all translators because every time they do their job, they produce a derivative work which is worth of legal protection. As a result, Intellectual Property right represent one of the most important legal right in the field of professional translation. Intellectual Property existing laws show that companies, institutions or authors have the right to designate a translation performance and that the translation itself is protected by moral and economic rights. These concepts are expressed in the first international agreement on Intellectual Property rights which is the *Berne Convention for the Protection of Literary and Artistic Works* signed in 1886 (see Chapter 1).

It can therefore be asserted that it exists a close relation between legal translation and Intellectual Property because translators, as authors of intellectual creations, are internationally recognized as owners of Intellectual Property rights.

CHAPTER 3

3.1 The European Court of Justice translation service

The Court of Justice is one of the main institutions of the European Union and it was created with the entering into force of the Treaty of Lisbon in 2009. The Court has many functions and responsibilities, but the most important is interpreting and implementing the European legislation and guaranteeing the respect of European Law. The Court works as the judicial authority of the European Union by coworking with the national jurisdictions of each Member State. It is important to highlight the multilinguistic aspect of this institution and the fact that multilingualism is guaranteed by the need of the European Union of spreading a common jurisdiction all over the Member States and, moreover, it allows each party in court to communicate with each other. Furthermore, every citizen of the European Union can access to the communitarian jurisdiction without having big issues of linguistic barriers. The translations are made in a multilinguistic environment in which all official languages of the European Union are included. In the official web page of the Court of Justice it is possible to find a lot of information about how it works and there is also an explanation about the existing language arrangements:

In direct actions, the language used in the application (which may be one of the 24 official languages of the European Union) will, in principle, be the ‘language of the case’, that is to say the language in which the proceedings will be conducted. In appeals, the language of the case is that of the judgment or order of the General Court which is under appeal. With references for preliminary rulings, the language of the case is that of the national court which made the reference to the Court of Justice. Oral proceedings at hearings are interpreted simultaneously, as required, into various official languages of the European Union. The Judges deliberate, without interpreters, in a common language which, traditionally, is French⁴.

Most individuals who work on translations are freelance translators who are experts in legal language and they receive support and assistance from the Court’s translation service in order to reach the high quality requested. The translation service ensures the smooth running of the Court’s judicial proceedings and the multilingual

⁴ Court of Justice of the European Union Website: <https://bit.ly/2yDZdMJ>

dissemination of the Court’s decisions. The complex variety of text genres results from different aspects such as: document type, field of specialization, style, language, length, author’s legal culture and background, etc. The Court enters into a contract, based on strict confidentiality rules, with which it maintains close working relations with the translators, who can be natural or legal persons. Indeed, the text translated in this chapter is part of the framework contract for the provision of translation services of the European Union Court of Justice and it can be taken as an example of Intellectual Property rights legislation in translators’ professional area.

3.2 Article 6: Intellectual Property rights

The article 6 of this framework contract deals with the Intellectual Property rights and presents, with a full description, all the bonds of ownership of each specific kind of Intellectual Property right. In total, the article is made up by 8 sections, but for this analysis I will take in consideration just the first 3 sections which represent the thematic nucleus of the article.

The source text is composed by 1143 words whereas the target text is composed by 1259 words. As a matter of fact, English and Spanish have substantial differences in vocabulary and in the syntactic structure which influence the text’s length.

3.3 Translation

Source text	Target text
<p>ARTICLE 6 – INTELLECTUAL PROPERTY RIGHTS</p>	<p>CLÁUSULA 6 – DERECHOS DE PROPIEDAD INTELECTUAL</p>
<p>6.1 OWNERSHIP OF THE RIGHTS</p>	<p>6.1 TITULARIDAD DE LOS DERECHOS</p>
<p>The European Union acquires irrevocably worldwide ownership of the translations</p>	<p>La Unión Europea adquiere irrevocablemente la titularidad</p>

<p>and of all intellectual property rights under the framework contract. The intellectual property rights so acquired include any rights, such as copyright and other intellectual or industrial property rights, to any of the translations and to all technological solutions and information created or produced by the contractor or by its subcontractor in performance of the framework contract. The contracting authority may exploit and use the acquired rights as stipulated in this framework contract. The European Union acquires all the rights from the moment the contracting authority approves the translations delivered by the contractor. Such delivery and approval are deemed to constitute an effective assignment of rights from the contractor to the European Union.</p> <p>The payment of the price includes any fees payable to the contractor about the acquisition of ownership of rights by the European Union including for all forms of exploitation and of use of the translations.</p>	<p>internacional sobre las traducciones y sobre todos los derechos de propiedad intelectual contemplados en el contrato marco. Los derechos de propiedad intelectual adquiridos incluyen todo tipo de derecho, tales como los derechos de autor y otros derechos de propiedad intelectual o industrial, sobre cualquiera de las traducciones y sobre los recursos tecnológicos e información que el contratista, o su subcontratista, cree o produzca en cumplimiento del contrato marco. La autoridad contratante podrá explotar y usar los derechos adquiridos como se dispone en este contrato marco. La Unión Europea adquiere todos los derechos desde el momento en que la autoridad contratante apruebe las traducciones que el contratista entregue. Se considera que tal entrega y aprobación constituyen la cesión efectiva de los derechos del contratista a la Unión Europea.</p> <p>El pago del precio incluirá cualquier tipo de honorario pagadero al contratista sobre la titularidad de los derechos que adquiere la Unión Europea, incluyendo todas las formas de explotación y uso de las traducciones.</p>
<p>6.2 LICENSING RIGHTS ON PRE-EXISTING MATERIALS</p>	<p>6.2 DERECHOS DE LICENCIA SOBRE MATERIALES</p>

<p>Unless provided otherwise in the special conditions, the European Union does not acquire ownership of pre-existing rights under this framework contract.</p> <p>The contractor licenses the pre-existing rights on a royalty-free, non-exclusive and irrevocable basis to the European Union, which may use the pre-existing materials for all the modes of exploitation set out in this framework contract. All pre-existing rights are licensed to the European Union from the moment the translations are delivered and approved by the contracting authority.</p> <p>The licensing of pre-existing rights to the European Union under this framework contract covers all territories worldwide and is valid for the duration of intellectual property rights protection.</p> <p>The payment of the price as set out in the framework contract is deemed to also include any fees payable to the contractor in relation to the licensing of pre-existing rights to the European Union, including for all forms of exploitation and of use of the translations.</p> <p>Where performance of the framework contract requires that the contractor use pre-existing materials belonging to the contracting authority, the contracting</p>	<p>PREEXISTENTES</p> <p>Según este contrato marco, salvo cuando se disponga lo contrario en las condiciones especiales, la Unión Europea no adquiere la titularidad de los derechos preexistentes.</p> <p>El contratista cede los derechos preexistentes, de forma irrevocable, non-exclusiva, y libre de las regalías, a la Unión Europea, la cual puede utilizar los materiales preexistentes para todas las modalidades de explotación mencionadas en este contrato marco. Se ceden todos los derechos preexistentes a la Unión Europea a partir del momento en que la autoridad contratante reciba y apruebe las traducciones.</p> <p>La licencia de derechos preexistentes a la Unión Europea en el ámbito de este contrato marco cubre todos los territorios y tiene vigencia durante todo el plazo de protección de los derechos de propiedad intelectual.</p> <p>El pago del precio indicado en el contrato marco incluirá cualquier honorario pagadero al contratista en relación con la licencia de derechos preexistentes a la Unión Europea, incluyendo todas las formas de explotación y uso de las traducciones.</p> <p>En el caso en que la ejecución del contrato marco requiera que el contratista utilice</p>
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<p>authority may request that the contractor signs an adequate licence agreement. Such use by the contractor will not entail any transfer of rights to the contractor and is limited to the needs of this framework contract.</p>	<p>materiales preexistentes pertenecientes a la autoridad contratante, dicha autoridad puede solicitar que el contratista firme el acuerdo de licencia correspondiente. Tal uso no supondrá ninguna cesión de derechos al contratista y se limitará a las necesidades del presente contrato marco.</p>
<p>6.3 EXCLUSIVE RIGHTS</p> <p>The European Union acquires the following exclusive rights:</p> <p>reproduction: the right to authorise or prohibit direct or indirect, temporary or permanent reproduction of the translations by any means (mechanical, digital or other) and in any form, in whole or in part;</p> <p>(b) communication to the public: the exclusive right to authorise or prohibit any display, performance or communication to the public, by wire or wireless means, including the making available to the public of the translations in such a way that members of the public may access them from a place and at a time individually chosen by them; this right also includes the communication and broadcasting by cable or by satellite; (c) distribution: the exclusive right to authorise or prohibit any form of distribution of translations or copies of the</p>	<p>6.3 DERECHOS EXCLUSIVOS</p> <p>La Unión Europea adquiere los derechos exclusivos mencionados a continuación:</p> <p>(a) Reproducción: el derecho a prohibir o autorizar reproducciones de las traducciones, directas o indirectas, temporales o permanentes, a través de cualquier medio (mecánico, digital o de otro tipo) y en cualquier formato, de la misma parte o en su totalidad;</p> <p>(b) Comunicación al público: el derecho exclusivo a prohibir o autorizar cualquier presentación, divulgación o comunicación al público, a través de medios alámbricos o inalámbricos, incluyendo el hecho de facilitar las traducciones a los ciudadanos de forma que puedan acceder a las traducciones en el momento y lugar que elijan individualmente; este derecho incluye también la comunicación y transmisión alámbrica o por satélite;</p>

<p>translations to the public, by sale or otherwise; (d) rental: the exclusive right to authorise or prohibit rental or lending of the translations or of copies of the translations; (e) adaptation: the exclusive right to authorise or prohibit any modification of the translations; (f) translation: the exclusive right to authorise or prohibit any translation, adaptation, arrangement, creation of derivative works, and any other alteration of the translations, subject to the respect of moral rights of authors, where applicable; (g) where the translations are or include a database: the exclusive right to authorise or prohibit the extraction of all or a substantial part of the contents of the database to another medium by any means or in any form; and the exclusive right to authorise or prohibit the re-utilisation of all or a substantial part of the contents of the database by the distribution of copies, by renting, by on-line or other forms of transmission;</p> <p>(h) where the translations are or include a patentable subject matter: the right to register them as a patent and to further exploit such patent to the fullest extent; (i) where the translations are or include logos or subject matter which could be registered as a trademark: the right to register such logo or subject matter as a trademark and to further exploit and use it;</p>	<p>(c) Distribución: el derecho exclusivo a prohibir o autorizar cualquier forma de distribución de las traducciones, o copias de las mismas, al público, a través de su venta o de otra manera;</p> <p>(d) Alquiler: el derecho exclusivo a prohibir o autorizar el alquiler o préstamo de las traducciones, o copias de las mismas;</p> <p>(e) Adaptación: el derecho exclusivo a prohibir o autorizar cualquier modificación de las traducciones;</p> <p>(f) Traducción: el derecho exclusivo a prohibir o autorizar cualquier traducción, adaptación, arreglo, creación de obras derivadas, y cualquier otra modificación en las traducciones, dentro del respeto a los derechos morales del autor, cuando proceda;</p> <p>(g) En el caso en que las traducciones sean, o incluyan, una base de datos: el derecho exclusivo a prohibir o autorizar la extracción, de todo o de una parte considerable, de los contenidos de la base de datos a otro soporte a través de cualquier medio o en cualquier formato; y el derecho exclusivo a prohibir o autorizar la reutilización, de todo o de una parte considerable, de los contenidos de la base de datos a través de la distribución de copias, a través de alquiler o transmisión en línea o por cualquier otro modo;</p>
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<p>(j) where the translations are or include know-how: the right to use such know-how as is necessary to make use of the translations to the full extent provided for by this framework contract, and the right to make it available to contractors or subcontractors acting on behalf of the contracting authority, subject to their signing of adequate confidentiality undertakings where necessary;</p>	<p>(h) En el caso en que las traducciones sean, o incluyan, una materia susceptible de patente: el derecho a registrar las traducciones como patentes y a utilizar posteriormente dicha patente en la máxima medida permitida;</p> <p>(i) En el caso en que las traducciones sean, o incluyan, logos o contenidos que se podrían registrar como marca: el derecho a registrar tal logo o el contenido en cuestión como marca y el derecho a su uso posterior;</p> <p>(j) En el caso en que las traducciones sean, o incluyan, conocimientos técnicos⁵: el derecho a utilizar tales conocimientos técnicos como sea necesario con el fin de utilizar las traducciones en medida de lo que facilite el presente contrato marco, y el derecho a facilitarlos a los contratistas, o subcontratistas, que actúan en nombre de la parte contratante, tras firmar los compromisos oportunos de confidencialidad en caso necesario;</p>
<p>(k) where the translations are documents: (i) the right to authorise the reuse of the documents in conformity with the</p>	<p>(k) En el caso en que las traducciones sean documentos: (i) El derecho a autorizar la reutilización de los</p>

⁵ Translator’s note: know-how is a compound term which does not refer to an academical knowledge but, instead, it is a very common term in international trade which refers to a technical knowledge. This knowledge consists in the practical skills that are included in corporate strategies and which originates from previous and direct experience in the field. In Spanish it literally means: “saber cómo” and, in this case, it is related to the practical abilities of legal translation.

<p>Commission Decision of 12 December 2011 on the reuse of Commission documents (2011/833/EU), to the extent it is applicable and the documents fall within its scope and are not excluded by any of its provisions; for the sake of this provision, ‘reuse’ and ‘document’ have the meaning given to it by this decision; (ii) the right to store and archive the translations in line with the document management rules applicable to the contracting authority, including digitisation or converting the format for preservation or new use purposes;</p> <p>(l) where the translations are or incorporate software, including source code, object code and, where relevant, documentation, preparatory materials and manuals, in addition to the other rights mentioned in this article:</p> <p>(i) end-user rights, for all uses by the European Union or by subcontractors which result from this framework contract and from the intention of the parties; (ii) the rights to decompile or disassemble the software;</p> <p>(m) to the extent that the contractor may invoke moral rights, the right for the contracting authority, except where otherwise provided in this framework contract, to publish the translations with or without mentioning the creator(s)’</p>	<p>documentos en conformidad con la Decisión de la Comisión del 12 de diciembre de 2011 relativa a la reutilización de los documentos de la Comisión (2011/833/UE), en la medida que sea aplicable y que los documentos se encuentren dentro del campo de aplicación y no se excluyan mediante disposición alguna; en beneficio de esta disposición, los términos “reutilización” y “documento” poseen el significado que se les otorga en la Decisión de la Comisión de la Unión Europea; (ii) el derecho a conservar y archivar las traducciones de acuerdo con las normas de gestión de documentos aplicables a la autoridad contratante, incluida la digitalización o la conversión de formato con el fin de preservación o uso para otros fines;</p> <p>(l) En el caso en que las traducciones sean, o incluyan, un software, que contenga un código fuente, código objeto y, si procede, documentación, manuales y materiales preparatorios, además de los otros derechos previamente mencionados en esta cláusula:</p> <p>(i) los Derechos de usuario final, para cualquier uso por parte de la Unión Europea o por parte de los subcontratistas que derivan del presente contrato marco y de la intención de ambas partes; (ii) los derechos a aplicar técnicas de ingeniería</p>
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<p>name(s), and the right to decide when and whether the translations may be disclosed and published.</p> <p>The contractor warrants that the exclusive rights and the modes of exploitation may be exercised by the European Union on all parts of the translations, be they created by the contractor or consisting of pre-existing materials.</p> <p>Where pre-existing materials are inserted in the translations, the contracting authority may accept reasonable restrictions impacting on the above list, provided that the said materials are easily identifiable and separable from the rest, that they do not correspond to substantial elements of the translations, and that, should the need arise, satisfactory replacement solutions exist, at no additional costs to the contracting authority. In such case, the contractor will have to clearly inform the contracting authority before making such choice and the contracting authority has the right to refuse it.</p>	<p>inversa⁶ al software;</p> <p>(m) En la medida en que el contratista pueda invocar derechos morales, el derecho de la parte contratante, salvo cuando se indique lo contrario en el presente contrato marco, a publicar las traducciones independientemente de que se mencione el nombre del autor o de los autores, y el derecho a decidir el momento de su divulgación y publicación.</p> <p>El contratista garantiza que la Unión Europea puede ejecutar los derechos exclusivos y los modos de explotación sobre todas las partes de las traducciones, creadas por el contratista o compuestas por materiales preexistentes.</p> <p>En el caso en que las traducciones incluyan materiales preexistentes, la autoridad contratante puede aceptar una serie de restricciones razonables que afecten al listado anterior, siempre y cuando dichos materiales sean fácilmente identificables y separables del resto, siempre y cuando no correspondan a elementos sustanciales de las traducciones, y, en caso de necesidad, existan soluciones satisfactorias para su sustitución, sin ningún coste adicional para la autoridad</p>
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⁶ Translator's note: decompile and disassemble are two terms which have Anglo-Saxon origins and come from the specific semantic field of computer technology. They refer to two different types of reverse engineering. Both consist in converting an executable program code, called object code, into a higher-level code which can be read by humans. Anyway, as they are very specialized terms, it is difficult to find equivalents in Spanish that maintain their technical meaning.

	<p>contratante. En tal caso, el contratista, antes de tomar esa decisión, tendrá que informar expresamente a la autoridad contratante la cual tiene derecho a rechazarlas.</p>
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CHAPTER 4

This final Chapter intends to carry out a practical analysis of the text translated in Chapter 3 from several points of view: textual, syntactical-grammatical, lexical and translational. The focus of the final part will be on some of the translating issues found and the solutions applied.

4.1 Textual characteristics

In specialized translation, it is fundamental to be aware of textual genres and of their structure in terms of textual conventions. Indeed, in the case of legal translation, translators must analyse textual structures in order to be able to draw parallelisms and describe differences between two legal systems. In this scope, I will analyse the subgenre of contracts for the provision of services. Anyway, it is fundamental to mention that our source text, the contract for the provision of translation services, belongs to the European legal framework. For this reason, even though it is written in English and it presents linguistic features typical of the English legal language in contracts, it stands as an example of document drafted in an international environment. Thus, it is not strictly related to conventions of contracts drafted in specific legal systems (such as the United Kingdom or the United States legal frameworks).

First, it is important to provide a definition. A contract is an agreement taken between two parties to set out in a clear way the rights, obligations and duties of each party. Allen & Overy lawyers group (2016) gives the following definition: “a contract is an agreement giving rise to obligations which are enforced or recognised by law”. Hence, the primary function of a contract is to inform the parties about its terms and conditions and to create rights and duties between the parties.

Even though there are some practical differences between contracts written in English and in Spanish, it is possible to outline a general macrostructure as follows (Mayoral Asensio 2007a): Opening terms, which include information of the parties and the preamble; Contract terms, which include the description of the subject matter, definitions, conditions precedent, operative provisions such as duration, remuneration and performance, and boilerplate provisions; Closing terms, which include the testimonium clause and the signature and, finally, the Annexes which provide technical information.

In the case of our source contract for the provision of translation services (Appendix 1), it can be asserted that it is faithful to the structure provided but with some peculiarities. Indeed, it provides definitions at the very beginning of the contract and the contract terms are quite extended and deal with different aspects not explicitly mentioned by Mayoral Asensio (2007a) such as: confidentiality, termination of the contract, liability of the parties, tax provisions, and others.

In particular, I will now consider the macrostructure of the source text translated in this final thesis. According to the macrostructure provided by Mayoral Asensio (2007a) it can be included in the section of operative provisions. Our text is divided into three sections according to the type of Intellectual Property rights they deal with. The first section deals with the ownership of rights, the second one with the licensing of rights on pre-existing materials and the third one defines all the exclusive rights acquired by the European Union. As we know, it belongs to a contract stipulated in the European framework and it must give explicit reference to Intellectual Property rights as it does not exist a fully harmonized law on Intellectual Property in the European legal framework.

After having observed the macrostructure it is worth mentioning a few micro characteristics of the text. The textual structure must be consistent with the communicative situations and intentions and it must follow some textual standards. According to Beaugrande and Dressler (1981), there are seven standards of textuality among which cohesion and coherence are the fundamental ones. The aspect of coherence is defined by the authors as: “the way in which the configuration of concepts and relations are mutually accessible and relevant”. There are several types of coherence relations (cause, time, purpose) which are not always explicitly recognisable from written passages but result from cognitive processes of readers.

Then, cohesion, according to Beaugrande and Dressler (1981), “concerns the ways in which the components of the surface text, i.e. the actual words we hear or see, are mutually connected within a sequence”. The words within a text are dependent according to grammatical relations which are fundamental to the logic and to the communicative efficiency of the text. For instance, to maintain these relations, it is important to implement strategies such as deixis or the use of connectors. For instance:

“Such use *by the contractor* will not entail any transfer of rights *to the contractor* and is limited to the needs of *this* framework contract”.

“Tal uso no supondrá ninguna cesión de derechos *al contratista* y se limitará a las necesidades del *presente* contrato marco” (our translation).

This example demonstrates how sometimes English language tends to be more explicit in deictic references than Spanish (“contractor” repeated twice in English) and how other times there might be a correspondence: “*this*” / “*presente*”.

In conclusion, it is also worth mentioning the abundant repetition of fixed structures such as: “*where the translations are or include [...]*” translated as “*En el caso en que las traducciones sean o incluyan [...]*”, which contribute to the clarity and cohesion of the text both in English and Spanish. As already stated in the second Chapter, the strategy of repetition is useful in a textual genre which needs to be as pragmatic and unambiguous as possible.

4.2 Syntactical-grammatical characteristics

Regarding the syntactical-grammatical features, (See Chapter 2), legal language is generally quite complex. In the case of contracts, it is possible to affirm that there is a complex structuration of sentences both in English and Spanish, but this characteristic is not as marked as in other legal text genres. As a result, it is possible to find a few examples of complex syntax and show how they have been translated into Spanish.

First, even though this textual genre intends to be as clear as possible, many English sentences result long and complex due to the abundant use of passive forms which provides a sense of impersonality and focus on the action. Anyway, this tendency is not as marked in Spanish and, so, I tried to provide a consistent and fluent translation by converting many passives into active forms through relative clauses or by the use of “*pasiva refleja*” with “*se*”. This is demonstrated by the following examples:

1. “The payment of the price includes any fees payable to the contractor about *the acquisition of ownership of rights by the European Union* including for all forms of exploitation and of use of the translations”.
2. “All pre-existing rights *are licensed* to the European Union from the moment the translations *are delivered and approved* by the contracting authority”.

1. “El pago del precio incluirá cualquier tipo de honorario pagadero al contratista sobre *la titularidad de los derechos que adquiere la Unión Europea*, incluyendo todas las formas de explotación y uso de las traducciones” (our translation).
2. “*Se ceden* todos los derechos preexistentes a la Unión Europea a partir del momento en *que* la autoridad contratante *reciba y apruebe* las traducciones” (our translation).

Furthermore, it is worth mentioning the example presented in the second Chapter. The following sentence stands out as example of excessive subordination in English. It is a characteristic which is also quite common in Spanish, so I decided to maintain the length of the sentence but trying to make explicit reference to the hypothetical discourse marker “*provided that*” – “*siempre y cuando*” in order to clarify such a long sentence.

Where pre-existing materials are inserted in the translations, the contracting authority may accept reasonable restrictions impacting on the above list, *provided that* the said materials are easily identifiable and separable from the rest, *that* they do not correspond to substantial elements of the translations, and *that*, should the need arise, satisfactory replacement solutions exist, at no additional costs to the contracting authority.

En el caso en que las traducciones incluyan materiales preexistentes, la autoridad contratante puede aceptar una serie de restricciones razonables que afecten al listado anterior, *siempre y cuando* dichos materiales sean fácilmente identificables y separables del resto, *siempre y cuando* no correspondan a elementos sustanciales de las traducciones, y, en caso de necesidad, existan soluciones satisfactorias para su sustitución, sin ningún coste adicional para la autoridad contratante.

Another syntactical feature that should be mentioned is the word order. Many times, translating from English to Spanish requires a shift in the order of words to respect the grammatical and syntactical organization of the target language. For example:

“*Unless provided otherwise in the special conditions*, the European Union does not acquire ownership of pre-existing rights *under this framework contract*”.

“*Según este contrato marco, salvo cuando se disponga lo contrario en las condiciones especiales*, la Unión Europea no adquiere la titularidad de los derechos preexistentes”.

For what regards verbs modalities, *will* and *may* have almost always been translated with modal verbs in the future in Spanish such as:

1. “The contracting authority *may exploit and use* the acquired rights as stipulated in this framework contract”.

2. “Such use by the contractor *will not entail* any transfer of rights to the contractor and is limited to the needs of this framework contract”.

1. “La autoridad contratante *podrá explotar y usar* los derechos adquiridos como se dispone en este contrato marco”.

2. “Tal uso *no supondrá* ninguna cesión de derechos al contratista y se limitará a las necesidades del presente contrato marco”.

Finally, it is worth mentioning the abundance of performative verbs in present tense which express the obligations established by the contract. For instance: *acquire, approve, license, use, warrant*.

4.3 Lexical characteristics

As previously mentioned, the fundamental nucleus of Languages for Specific Purposes (LSP) is terminology. Indeed, each specialized language is characterized by specific and technical terms which could generate translating issues. In the case of legal language, this risk is extremely high due to its bound to legal systems. For this reason, I compiled a terminology record (Appendix 3) of 12 terms which represent the key word terms in the source text and in our translation. The terminology record stands out as an important translating tool because it provides the definition, the context of use and the respective sources of all terms included both in English and Spanish. Therefore, it is useful to understand analogies and differences among technical terms.

Anyway, besides the terminology record, it is worth mentioning a few lexical characteristics of our source text. First, there is a frequent repetition of the doublet “*exploit and use*” or “*exploitation and use*” referring to translations which I translated with its own equivalent in Spanish: “*uso y explotación*”. The case of the verb “*exploit / explotar*” stands out as example of term which has a quite prevailing negative connotation in common English and Spanish but that in this case acquires a different connotation. Indeed, in spite of its general negative sense, in the following example it just provides the sense of licensing the rights for the full use of translations:

“The contractor warrants that the exclusive rights and the modes of exploitation may be exercised by the European Union on all parts of the translations [...]”.

“El contratista garantiza que la Unión Europea puede ejecutar los derechos exclusivos y los modos de explotación sobre todas las partes de las traducciones [...]” (our translation).

Moreover, it is worth mentioning that, in terms of terminology, the densest part is section 6.3 which deals with the exclusive rights. In this part there is a great abundance of terms such as: *distribution, rental, adaptation, price, patentable subject matter, royalty-free, know-how, trademark* and computer science terms such as: *wire or wireless, database, software, source code, object code, decompile or disassemble, end-user rights, archive*. Many of these terms require different translation strategies. Some of them have equivalents in Spanish such as: “*materia susceptible de patente*” or “*alámbricos o inalámbricos*” whereas other terms required a deep research on the possible adaptations into Spanish and will be included in the following paragraph on translating issues.

Finally, it is fundamental to mention the fact that our source text makes explicit reference to Decision 2011/833/EU for what regards the definition of two terms: “*reuse*” and “*document*”. This shows how semitechnical terms which acquire new meanings in a specific legal context are clearly addressed by the contract itself in order to avoid ambiguity and misunderstandings.

4.4 Translational characteristics

The process of translation from a source text to a target text is complex and requires great intellectual effort. According to Hurtado Albir (2017) translation consists in a practical ability called “*proceso traductor*” (“translation process”) in which it is important to know how to solve translating issues that may arise. As mentioned in Chapter 2, it is fundamental that translators have competence not only in linguistic aspects but also in extralinguistic aspects. Translation methodologies are varied, and it is possible to assert that there is not one perfect methodology, but that it is strictly related to the objectives of the translation.

Hence, as we know, translators must have a background knowledge of the field in order to be able to translate specialized texts. In case of lack of this knowledge, documentation and research are fundamental. In addition, from a translational point of view, it is worth mentioning Hurtado Albir (2017):

“[...] lo más importante es el concepto que encierra el termino y no el termino en si; para comprender dicho termino (y para encontrar el equivalente justo en la lengua de llegada), es necesario saber relacionarlo con el concepto a que hace referencia” (Hurtado Albir 2017: 61) [The most important thing is the concept inside the term and not just the term itself; in order to understand such term (and to find the right equivalent in the target language), it is necessary to know how to relate it to the concept whom it refers to] (our translation).

Indeed, the most important translational characteristic is the special attention that requires the conceptual meaning. It is fundamental to find equivalents in the target language which refer to the same concept and are able to transfer the same communicative intentions of the source text. Furthermore, it is important to be able to use a language that results natural and appropriate in the target context.

Hence, the translation process implemented in this final thesis intends to be in line with the communicative intentions of the source text and to be faithful to the target language and genre. Of course, while translating I encountered some specific terms which required different approaches and translation strategies in order to deliver their conceptual meanings in Spanish. Thus, some of them will be discussed in the following section.

4.5 Translating issues and solutions

This final section intends to provide some examples of translating issues which required a deeper research and implied difficulties while translating from the source text to the target text. It is important to say that the following examples do not represent all the difficulties I encountered, but I selected them because I believe they are representative of different types of translating issues and strategies.

Copyright and Intellectual Property right

Before starting translating I had to clarify the concept of Intellectual Property and Copyright. Indeed, after some researches, I could observe that for Intellectual Property we refer to “creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce”⁷. Instead, it can be asserted that Copyright has almost the same meaning, but it refers to the Anglo-Saxon concept of “right to copy”. As a result, the concept of Intellectual Property includes all

⁷ World Intellectual Property Organization (WIPO) website: <http://www.wipo.int/about-ip/en/>

moral and economic rights entitled to authors of an intellectual creation whereas the concept of Copyright is usually associated with economic rights (such as distribution, reproduction, etc) hence it stands within the concept of Intellectual Property right. Finally, it is also worth mentioning the concept of “*industrial property rights*” which, according to our source text, is included in Intellectual Property rights. This concept refers to “intangible property such as inventions, industrial designs, trademarks, which is afforded protection under national and international intellectual property laws”⁸. As a result, industrial property includes any trademark or “patentable subject matter” which needs to be protected by intellectual property rights.

After having cleared all these ideas, I opted to translate the term “*copyright*” into “*derechos de autor*” which is the Spanish equivalent.

“The *intellectual property rights* so acquired include any rights, such as *copyright* and other *intellectual* or *industrial property rights* [...]”.

“Los *derechos de propiedad intelectual* adquiridos incluyen todo tipo de derecho, tales como los *derechos de autor* y otros *derechos de propiedad intelectual o industrial* [...]”.

Fees

The term “fees” originated translating issues because of its polysemy. In fact, the term “fee” is a technical term but can address several concepts according to the specific field in which it is included, and it could be translated into Spanish in several ways such as: “*tasa*”, “*tarifa*”, “*cuota*”, “*honorario*”. In order to solve this issue, I made a deep research through the different possible meanings in context. Thanks to parallel texts I could observe that the equivalent Spanish term in the context of contracts for the provision of services was “*honorarios*”. In this case the correct definition of fee would be: “A payment made to a professional person or to a professional or public body in exchange for advice or services”⁹ and the definition of “*honorario*”: “importe de los servicios de algunas profesiones liberales”¹⁰. Hence, it is possible to see how these two definitions express the same conceptual meaning and why I translated “fees” as “*honorarios*”. Here follows the example from our translation:

⁸ Business Dictionary: <https://bit.ly/2KfF9FL>

⁹ Oxford Dictionary: <https://en.oxforddictionaries.com/definition/fee>

¹⁰ Diccionario Real Academia Española (RAE): <http://dle.rae.es/?id=KdGWtpo>

“The payment of the price includes any *fees* payable to the contractor about the acquisition of ownership of rights by the European Union including for all forms of exploitation and of use of the translations”.

“El pago del precio incluirá cualquier tipo de *honorario* pagadero al contratista sobre la titularidad de los derechos que adquiere la Unión Europea, incluyendo todas las formas de explotación y uso de las traducciones”.

Know-how

The term “know-how” means literally in Spanish: “*saber cómo*” and, in this case, it is related to the practical ability of translation. In English, it is defined as: “knowledge of the methods or techniques of doing something, especially something technical or practical”¹¹. Hence, it does not refer to an academical knowledge, but to practical skills. This term comes from the technical terminology of international trade and corporate strategies and it refers to practical and technical skills which are originated from previous and direct experience in the field. Given that it is a technical term used in English and in the field of business and technologies, its translation results quite complex. Hence, “know-how” means technical expertise and, instead of providing a literal translation, I decided to translate its meaning as “*conocimientos técnicos*”. This translation maintains the conceptual meaning whereas a literal translation would have resulted forced and less immediate.

“(j) where the translations are or include *know-how*: the right to use such *know-how* as is necessary to make use of the translations to the full extent provided for by this framework contract, and the right to make it available to contractors or subcontractors acting on behalf of the contracting authority, subject to their signing of adequate confidentiality undertakings where necessary;”

(j) En el caso en que las traducciones sean, o incluyan, *conocimientos técnicos*: el derecho a utilizar tales *conocimientos técnicos* como sea necesario con el fin de utilizar las traducciones en medida de lo que facilite el presente contrato marco, y el derecho a facilitarlos a los contratistas, o subcontratistas, que actúan en nombre de la parte contratante, tras firmar los compromisos oportunos de confidencialidad en caso necesario;”.

¹¹ Collins Dictionary: <https://bit.ly/2Fv048Q>

Decompile / Disassemble

“Decompile” and “disassemble” are two terms which have Anglo-Saxon origins and come from the specific semantic field of computer science. Indeed, they are included in the section of the source text on software:

“(ii) the rights to *decompile* or *disassemble* the software”.

These two terms refer to two types of reverse engineering. Both consist in converting an executable program code, called object code, into a different code which can be read by humans. As they are very specialized terms of programming language, it is difficult to find equivalents in Spanish that maintain their technical meaning. For this reason, after a deep research on their meaning, I decided to translate them as follows:

(ii) los derechos a aplicar *técnicas de ingeniería inversa* al software;

The two terms were translated as “*técnicas de ingeniería inversa*” because I believe that the translation of such technical terms requires a hypernym that includes both meanings and that explains their technical and computer-based nature. This strategy is similar to the figure of speech of metonymy. A metonymy is defined as: “a figure of speech in which the name of one thing is used in place of that of another associated with or suggested by it”¹². In conclusion, I believe that this kind of translation, again instead of literal translation, delivers the concept in a clearer way.

¹² Collins Dictionary: <https://bit.ly/2DS8826>

RESULTS AND CONCLUSIONS

I would like to conclude with a few considerations on the results of this translation and comparative analysis:

1. The first fundamental aspect is that the source text belongs to a contract which makes part of the professional context of translators in the European Union. Indeed, translators are direct recipients of such rights and they should be aware of legislations on the matter. Hence, I consider this work of a great importance for future translators as it can be a reference not only from a translational point of view but also from a theoretical point of view. Indeed, after a deep research I tried to provide a comparative analysis between the European and Spanish legal frameworks in terms of Intellectual Property protection. The analysis provides a number of sources of law in both contexts and addresses with special attention the protection of translations. I observed that translations are internationally recognized as intellectual works by article 2 of the *Berne Convention* and that their protection is regulated by national legislations with a special attention to the implementation and integration of European Directives. Anyway, nowadays there is not a fully harmonized European law that unifies all national legislations. For this reason, contracts are fundamental to establish the terms and conditions of translation services.

2. Then, I found very useful the analysis of the theoretical framework of Languages for Specific Purposes (LSP). The research on the theoretical background of the field helped me to outline the outstanding features of legal language within contracts. I observed that legal English and legal Spanish have several characteristics in common such as stylistic features and the tendency to use technical and specific terminology. Moreover, they both present a syntax which is not as complex as in other legal texts because it is lessened by repeated fixed structures and by performative verbs in present tense. Anyway, I would like to highlight the fact that the abundance of passive forms in English has required the application of several strategies in order to avoid it in Spanish, in which it would have resulted intricate and less natural.

3. For what regards specialized translation, I tried to provide the reader with theoretical knowledge on legal translation and its bond to legal systems. Thanks to researches and thanks to the practical translation I carried out, I can affirm that there is

not a single rule in translation, but each translator should be free to decide which strategy is the most suitable according to the textual genre, the communicative situation and receivers. Especially in the field of legal translation, it is fundamental that translators focus their attention in delivering the same concept and legal effect of the source text. Hence, I provided, within my capabilities, a consistent translation of Intellectual Property rights which maintains the communicative intension and conceptual meanings of the source text and that results natural and faithful to the genre for a Spanish native speaker. Of course, all translators face difficulties during the translation process. I found some issues related to polysemy (“*fee*”) or to terms bound to specific fields such as the corporate world or computer science (“*decompile*”/“*disassemble*”). In these cases, mentioned in Chapter 4, I applied the best solutions I could according to my capabilities, aiming to be faithful to the concepts provided by the source text and to deliver them in a correct and natural way in Spanish.

In addition, it is worth mentioning the practical importance of the Appendices. The first one provides the full source contract which was useful to outline the most important features of legal English within contracts. The second Appendix is composed by three parallel texts useful to find the best equivalents in Spanish and to draw parallelisms between textual genres. Finally, the third Appendix consists of a terminology record with the definition and use in context of the most relevant terms in both languages.

In conclusion, I believe that nowadays, in such a globalized world, it is fundamental that translators are actively aware of laws on the protection of Intellectual Property rights. Indeed, as demonstrated by the sources of law mentioned, translations are recognized as derivative works worth of protection and translators must protect their own intellectual originality. Therefore, I hope this final thesis can stand as reference for future translators who are interested in legal translation and in Intellectual Property safeguard. Finally, I can certainly affirm that it represents a great step forward for my theoretical and practical knowledge, but also a great enrichment of my cultural and personal background.

RESUMEN

El presente Trabajo Fin de Grado se ha redactado en el ámbito del programa Doble Titulo entre la Universidad de Valladolid, grado en Estudios Ingleses y la Università degli Studi di Milano, grado en Mediazione Linguistica e Culturale. Tener la posibilidad de estudiar nueve meses en el extranjero pone en marcha un proceso fundamental en el camino académico del estudiante. Traducir de una lengua extranjera a otra lengua extranjera es un procedimiento muy complejo que requiere un estudio profundizado y consciente de ambos idiomas y de sus culturas. Por este motivo este trabajo trata de un ámbito estrechamente relacionado con el futuro laboral de los traductores, que es la protección de los derechos de Propiedad Intelectual sobre las traducciones. Este Trabajo Fin de Grado refleja el enriquecimiento académico y personal adquirido gracias a todos los diferentes temas tratados en ámbito teórico y práctico durante los tres años de estudios que me permitieron desarrollar unas habilidades fundamentales para el futuro laboral. Además, el presente trabajo se ha realizado gracias al soporte de las profesoras Maria Vittoria Calvi y María Belén López Arroyo. Por último, considero el programa Doble Titulo una oportunidad única para los estudiantes de idiomas, no solo para enriquecer su carrera, sino también para enriquecerse a nivel cultural.

El objetivo principal de mi trabajo es llevar a cabo un análisis comparativo y traductológico de los derechos de Propiedad Intelectual en el ámbito del trabajo de los traductores. Este trabajo quiere llevar adelante, además de una comparación teórica y práctica entre el inglés jurídico y el español jurídico de los contratos, una investigación sobre la legislación vigente en el ámbito de los derechos de Propiedad Intelectual en la Unión Europea y en España. De hecho, los traductores tienen que enfrentarse no solo con problemas estrictamente relacionados con la lengua, sino que tienen que conocer el entorno social, cultural y, especialmente en este caso, jurídico.

El texto que se traduce en el tercer capítulo incluye los tres primeros puntos de la cláusula número 6 del contrato marco de arrendamiento de servicios de traducción del Tribunal de Justicia de la Unión Europea. La cláusula mencionada trata de los derechos de Propiedad Intelectual relacionados con el trabajo de traducción ya que la persona encargada de una traducción efectúa una creación

intelectual con raíz propia y por eso es muy importante que conozca la legislación sobre la cuestión. En conclusión, espero que el presente trabajo se considere una referencia para estudiantes y futuros traductores interesados en la traducción especializada del lenguaje jurídico y en el campo de los derechos de Propiedad Intelectual.

En el ámbito del presente trabajo cabe comentar la naturaleza de las lenguas de especialidad. Con la denominación *lenguas de especialidad (LE)* nos referimos a todos los lenguajes utilizados para la comunicación en ámbitos profesionales y técnicos. Como afirma Calvi: “estos lenguajes se basan en las estructuras fonéticas, gramaticales y léxicas de una lengua natural y se caracterizan por la formación de terminología propia, así como por la preferencia por ciertas formas gramaticales y discursivas” (2015: 15). Hoy en día, gracias a varios fenómenos como la globalización, la movilidad de las personas entre diferentes países y la evolución de internet, las sociedades tienen que enfrentarse con frecuentes relaciones interculturales las cuales empujan el estudio y aprendizaje de lenguajes especializados. Dichos lenguajes representan el conjunto de los conocimientos compartidos por una cierta comunidad de expertos y se caracterizan por la formación de un léxico propio. Sin embargo, todavía no se ha logrado un consenso sobre la definición de lenguas de especialidad y existen diferentes corrientes de opinión sobre la cuestión. A pesar de la denominación, y lo que esa conlleva, estos lenguajes están en continua evolución y ampliación. Un idioma símbolo de este proceso es el inglés, una lengua que se utiliza a nivel internacional y que ofrece muchos prestamos asimilados de maneras diferentes según cada lengua.

Hay que diferenciar entre la dimensión horizontal, o componente temático, y la dimensión vertical, o componente social. Por componente social nos referimos al aspecto pragmático y a la función comunicativa de las lenguas de especialidad. De hecho, pueden existir diferentes tipologías de textos, diferentes funciones comunicativas y, sobre todo, diferentes niveles de especialidad, es decir diferentes contextos comunicativos e interlocutores. En conclusión, cabe destacar que el estudio de las lenguas de especialidad sigue en desarrollo y ampliación y que tal desarrollo ha favorecido la creación de comunidades de expertos que emplean un lenguaje

común. Esto resulta muy importante ya que las diferencias comunicativas entre diferentes culturas pueden causar malentendidos (Calvi 2015: 33-34).

En cuanto lengua de especialidad, el lenguaje jurídico del que trata el presente trabajo posee rasgos y características propias. Los profesionales de este campo generalmente se ocupan de la traducción de textos como, por ejemplo: contratos, convenios, ensayos estadísticos o leyes, testamentos y juicios. El proceso de globalización económica, política, social y cultural afecta al mundo entero de manera muy directa así que es fundamental que figuras como los traductores y los mediadores interculturales estén preparados para una realidad de interrelación en continuo desarrollo. Los sistemas jurídicos cambian de un país a otro y por eso el traductor jurídico debe analizar los contextos jurídicos tanto de la lengua meta como de la lengua origen. El lenguaje jurídico en general está caracterizado por la abundancia de tecnicismos y por una tendencia a la complejidad, pero, como veremos a lo largo de este trabajo, esta tendencia no suele ser tan marcada en el lenguaje jurídico de los contratos.

En el ámbito de este trabajo es fundamental explicar la relación entre la traducción y los derechos de Propiedad Intelectual. El concepto de Propiedad Intelectual se puede definir de la siguiente manera: “el conjunto de facultades que se reconoce, por la Ley, a quien crea una obra artística, científica o literaria o realiza determinadas actuaciones o producciones que se consideran generadas por el intelecto” (Marín Cámara 2009: 2). Esta definición se aplica a todas las creaciones nuevas del intelecto y un traductor, cada vez que realiza una obra derivada (traducción), adquiere una serie de derechos de Propiedad Intelectual sobre dicha obra. Entonces, este concepto expresa la importancia que se reconozcan una serie de facultades a un traductor, cuando ofrece su servicio a una empresa o autoridad. Por lo tanto, es posible afirmar que la relación entre la traducción especializada y los derechos de Propiedad Intelectual es muy estrecha y que la protección de estos derechos es de interés internacional (como se ve en el primer capítulo gracias a varios tratados internacionales como la *Convención de Berna*). Además, se han creado instituciones como la Organización Mundial de la Propiedad Intelectual (OMPI) y se ha desarrollado una legislación Europea que quiere armonizar e integrar todas las legislaciones de los Estados Miembros.

Por lo que concierne a la estructura, este Trabajo Fin de Grado está compuesto por cuatro capítulos a los que se añade una introducción, un breve resumen en inglés y en italiano, las conclusiones y la bibliografía. En el primer capítulo se desarrolla un análisis comparativo entre dos contextos jurídicos (Unión Europea y España) con relación a la tutela y regulación de los derechos de Propiedad Intelectual principalmente en materia de traducciones. El segundo capítulo trata el contexto teórico de los lenguajes especializados con especial atención al lenguaje jurídico de los contratos y a la traducción jurídica especializada. En particular, proporciona una descripción de los rasgos lingüísticos más importantes del inglés jurídico y del español jurídico de los contratos. Finalmente, el tercero y cuarto capítulo ponen en práctica los conocimientos teóricos precedentemente adquiridos a través de la traducción de un texto y el análisis del mismo desde diferentes perspectivas: textual, sintáctico gramatical, terminológica y traductológica. La parte final del último capítulo evidencia las dificultades de traducción y las soluciones aportadas.

Además, se añaden tres apéndices en un CD-ROM. En el primer apéndice está el texto origen en versión integral, ya que se ha utilizado como fuente de ejemplos para la descripción del inglés jurídico. En el segundo apéndice se pueden encontrar algunos textos paralelos que se han utilizado como herramienta de soporte para la traducción y en el tercer apéndice se ha elaborado una ficha terminológica de los términos más representativos del campo encontrados en la traducción del texto.

Palabras clave: derechos de Propiedad Intelectual, lenguaje jurídico, contrato, traducción jurídica especializada, dificultades traductológicas

RIASSUNTO

La redazione del presente elaborato si è svolta nell'ambito di un percorso di studi triennale realizzato in seno al programma Doppio Titolo che vede la collaborazione dell'Università degli Studi di Milano, Facoltà di Mediazione Linguistica e Culturale e l'Università di Valladolid, Facoltà di Filologia Inglese. Inoltre, il lavoro è stato realizzato grazie alla guida delle docenti relatrici Maria Vittoria Calvi e María Belén López Arroyo.

Il presente elaborato finale costituisce un'analisi comparata e traduttologica inglese/spagnolo della clausola sui diritti di Proprietà Intellettuale contenuta all'interno di un contratto stipulato nel contesto della Corte di Giustizia Europea per la prestazione di servizi di traduzione. La scelta del testo da tradurre non è casuale, infatti rispecchia l'interesse per un tema fondamentale per futuri traduttori, ovvero la tutela dell'originalità intellettuale. Pertanto, nel primo capitolo viene effettuata un'analisi generale del sistema giuridico europeo e spagnolo nell'ambito della tutela dei diritti di Proprietà Intellettuale, con particolare attenzione alle disposizioni in materia di traduzione. Infatti, in questo ambito è importante che un traduttore sia preparato non solo dal punto di vista linguistico e traduttologico, ma anche dal punto di vista del contesto giuridico all'interno del quale si colloca la traduzione.

Il secondo capitolo presenta il contesto teorico dell'elaborato e affronta il tema dei linguaggi specifici, in particolare del linguaggio giuridico all'interno del genere testuale dei contratti descrivendo le caratteristiche più importanti in inglese e in spagnolo. Inoltre, nello stesso capitolo si affronta il tema della traduzione specialistica con particolare riguardo alla traduzione giuridica. La complessità della traduzione giuridica deriva dal fatto che il linguaggio specifico utilizzato è strettamente legato al sistema giuridico di un determinato paese o contesto linguistico. Dunque, è necessario che il traduttore applichi le migliori strategie possibili con l'obiettivo di essere fedele ai concetti espressi nel testo d'origine e far sì che il testo d'arrivo produca lo stesso effetto legale. Infine, la traduzione deve risultare comprensibile, naturale e deve rispecchiare correttamente il genere testuale nel contesto di arrivo.

Il terzo e quarto capitolo rappresentano l'applicazione pratica delle conoscenze teoriche precedentemente acquisite attraverso la traduzione del testo e l'analisi dello

stesso a livello testuale, sintattico grammaticale, terminologico e traduttologico. La parte finale del presente elaborato espone le maggiori difficoltà incontrate nella traduzione e le soluzioni applicate. Le difficoltà traduttologiche trattate sono legate alla natura estremamente tecnica di alcuni termini o alla provenienza da altri linguaggi specifici come, per esempio, quello informatico.

Oltre ai quattro capitoli, si aggiungono tre appendici contenute in un CD-ROM. La prima è costituita dal contratto origine completo, in quanto utilizzato nell'analisi delle caratteristiche del linguaggio giuridico inglese nei contratti. La seconda include i testi paralleli su cui mi sono basata per realizzare la traduzione. Infine, la terza consiste in una tabella con i termini principali incontrati durante la traduzione insieme alle rispettive definizioni e usi in contesti reali.

Parole chiave: diritti di Proprietà Intellettuale, linguaggio giuridico, contratto, traduzione giuridica specialistica, difficoltà traduttologiche.

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