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Appeals using “haikus” against Spanish Patent Office decisions relating to SPCs?

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According to Spanish law, the decisions handed down by the Spanish Patents and Trademarks Office (“SPTO”) in relation to applications for Supplementary Protection Certificates (“SPCs”) may be appealed to the “High Courts of Justice.” These are regional courts with jurisdiction to review the legality of administrative acts dealing with certain specific matters. In the context of this appeal, it is possible to challenge both the factual and legal conclusions reached by the SPTO.

According to a recent reform of Spanish procedural law that came into force on 22 July 2016, if some specific requirements are fulfilled, it will be possible to challenge judgments from the “High Courts of Justice” by filing a “cassation appeal” before the Third Chamber of the Supreme Court. Although this was already possible under the previous law, under the new law it will be more difficult to meet the admissibility criteria, which have become stricter. To sum-up, the Supreme Court will only accept “cassation appeals” in cases dealing with administrative law when it is necessary to provide case law in a specific area (i.e. “objective cassation interest”).

This difficulty has been aggravated by an agreement reached by the Governing Chamber of the Supreme Court on 20 April 2016, whereby the maximum length of the writ announcing the “cassation appeal” has been limited to 15 pages. In turn, the maximum length of the writ substantiating the appeal has been limited to 25 pages (yes, 25 pages!).

So the teaching of these reforms is clear. Taking into account the complexity of cases involving SPCs, patent practitioners will have to learn how to draft appeals in “haiku” form…

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