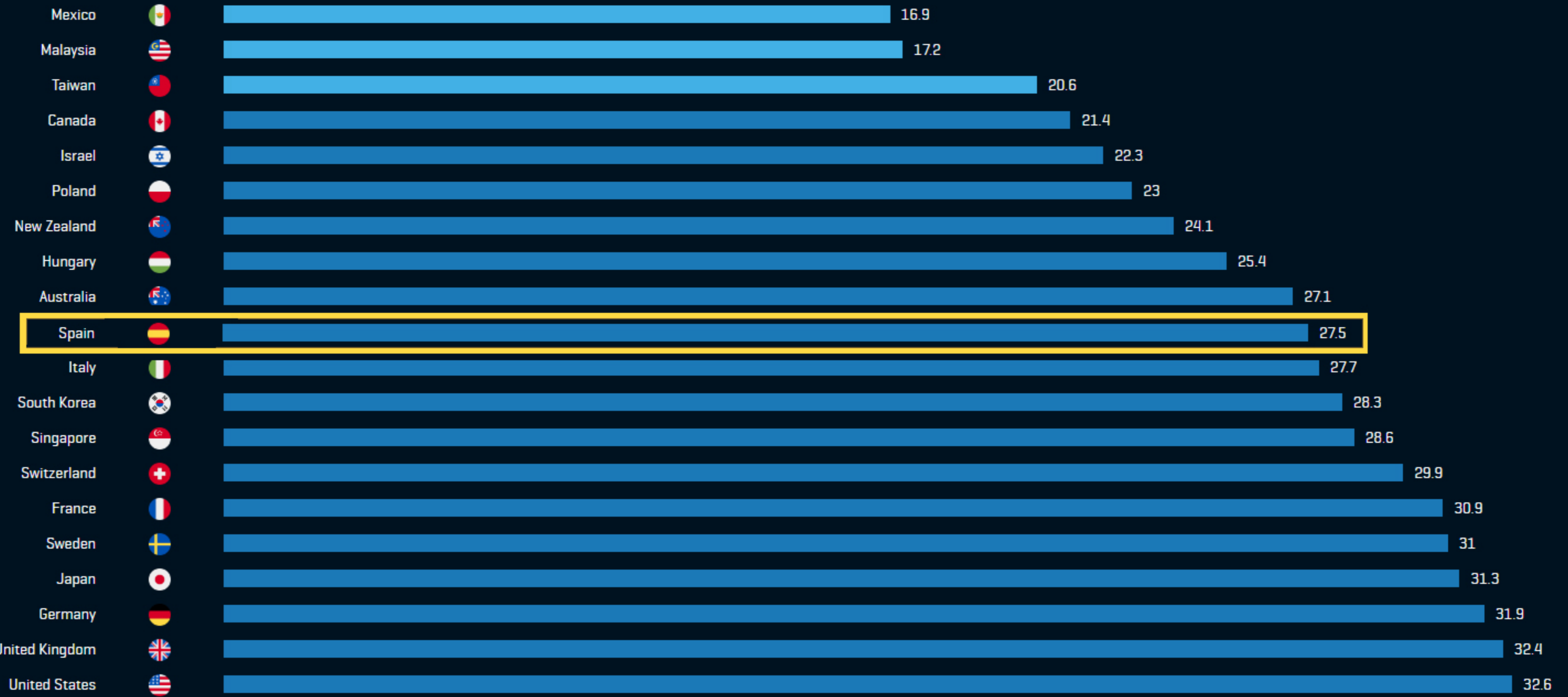


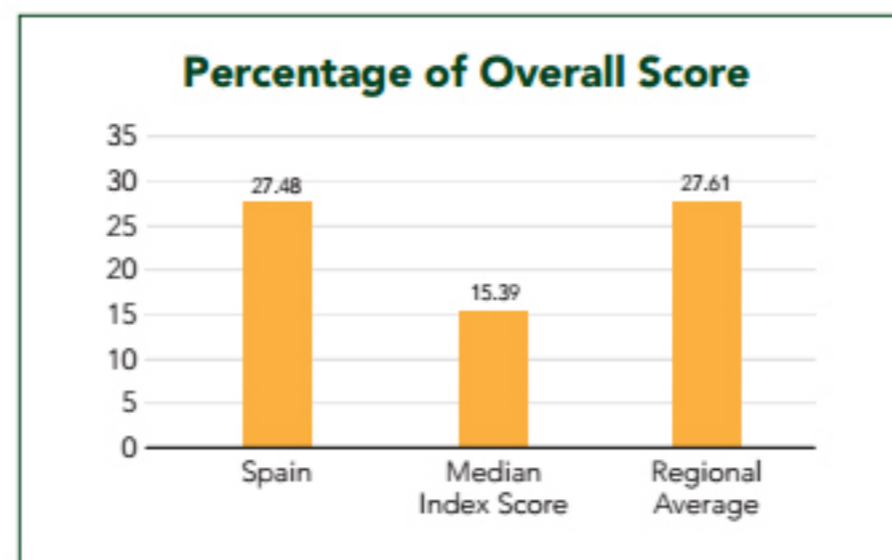
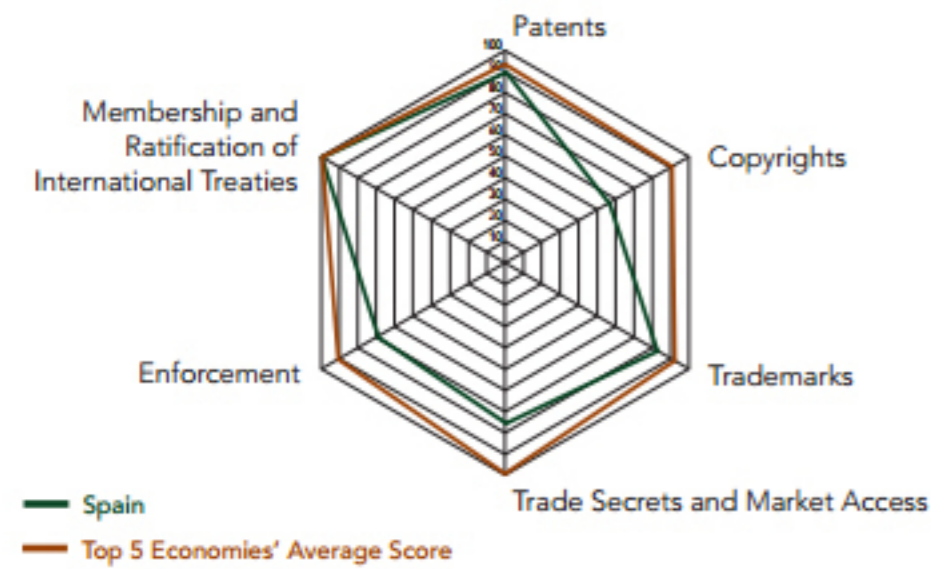
Overall Economy Scores



SPAIN

Rank: 11/45

Spotlight on the National IP Environment



Strengths and Weaknesses

Key Areas of Strength

- ✓ Standard IP rights in legislation, including many sector-specific rights
- ✓ Efforts to strengthen and modernize patent and copyright frameworks in order to align with EU and international standards
- ✓ Civil and criminal reform enhances remedies available for IP infringement
- ✓ Court decisions typically in line with ECJ jurisprudence in a number of areas

Key Areas of Weakness

- ✗ Counterfeiting and piracy levels remain high compared to other EU economies despite reforms
- ✗ Gaps in patent system lead to a disproportionate volume of weak national patents
- ✗ Online copyright regime displays important gaps in legislation (including in terms of ISP liability and exceptions to copyright) and, although growing, inadequate action on the ground
- ✗ Enforcement operations face significant delays and are often non-deterrent, although improvements are visible

Patents, Related Rights, and Limitations

2. Patentability requirements: Spain's patent law provides for standard patentability criteria of novelty, inventive step, and industrial application and is considered to be fairly pro-technology in terms of the ability to patent biotechnology, life sciences, and computer-related inventions, although some exceptions exist. In relation to life sciences inventions, patent amendments adopted in 2015 that will enter into force in 2017 fill in legislative gaps concerning the ability to patent new therapeutic applications for already known substances and compositions. More generally, the majority of patents in Spain are currently reviewed under an abbreviated procedure where substantive examination is optional, resulting in a relatively large volume of weak patents and a high rate of invalidations and additional costs. Recognizing these barriers, under the new patent amendments formal substantive examination will be required and a post-grant opposition system for national-level filings will be introduced.

lower rate of response (as low as 10% in 2015). In addition, extreme delays reportedly exist within the IP Commission, with notices taking by some estimates over one year to reach resolution.

Trademarks, Related Rights, and Limitations

18. Legal measures available that provide necessary exclusive rights to redress unauthorized uses of trademarks: Spain provides many standard legal measures to protect against infringement of trademarks that are enforceable through the commercial and criminal courts. Currently, invalidation proceedings are not available before the Spanish patent office. But under the new EU trademark directive, Spain is required to put in place by 2023 an administrative procedure for opposition and invalidity proceedings. Counterfeiting is a significant problem in Spain: according to EUIPO data, Spain ranks fifth in the EU for the intentional purchasing of counterfeits and is one of the top five economies in terms of economic impact from fake or illicit alcohol, sports items, cosmetics, clothing, and toys.

Copyrights, Related Rights, and Limitations

10. Legal measures that provide necessary exclusive rights preventing infringement of copyrights and related rights (including Web hosting, streaming, and linking); 11. Availability of frameworks that promote cooperative action against online piracy; and 12. Scope of limitations and exceptions to copyrights and related rights: Spanish copyright law provides basic exclusive rights to redress copyright infringement. During 2011–15, Spain introduced a major, multiyear legislative reform aimed at addressing high levels of piracy, particularly in the online sphere. According to one study, nearly 90% of digital content is infringing, with growing consumption of unauthorized content particularly visible in the areas of TV, gaming, and sports. A 2016 study from the consultancy IDC also suggests a rate of 45% of illegal software use in businesses. Amendments to the Intellectual Property Act and the Criminal Code in 2014–15 do not entirely clarify liability of ISPs, criminalizing the act of facilitating in an active and non-neutral way but limiting liability for ISPs that provide merely technical intermediary services. In addition, the Sinde Act of 2012 created a partial notice and takedown system, whereby the Intellectual Property Commission may receive notices from copyright owners and determine which should be sent on to relevant ISPs, who then should either block the identified content within 72 hours of notice or the case is brought before a court. Although the system is a positive step, data are mixed regarding its effectiveness. According to the most recent data from the Ministry of Education, as of mid-2015, close to 500 complaints had been filed, but just over half were sent

Enforcement

27. Civil and procedural remedies; and 29. Criminal standards including minimum imprisonment and minimum fines: Generally speaking, enforcement through the courts is considered to be slow, such that by the time decisions are issued (if issued at all), the relevance of the ruling may be limited and ineffective. Standard remedies and penalties are available, although damages awarded are often low relative to other EU member states. Amendments to the criminal code in 2015 increased penalties for IP crimes, including for noncommercial infringement where indirect and/or non-neutral benefit exists, and raised seizure and confiscation powers for judges and police. However, even though IP specialization is growing, still greater IP expertise and resources are needed by the judiciary as well as other enforcement bodies to effectively apply the new provisions.

INDICATOR	SCORE	INDICATOR	SCORE
Category 1: Patents, Related Rights, and Limitations			
1. Term of protection	1	19. Frameworks against online sale of counterfeit goods	0.5
2. Patentability requirements	0.75	20. Industrial design term of protection	1
3. Patentability of CILs	1	21. Exclusive rights, industrial design rights	0.75
4. Pharmaceutical-related enforcement	0.5	Category 4: Trade Secrets and Market Access	
5. Legislative criteria and active use of compulsory licensing	1	22. Protection of trade secrets	0.75
6. Pharmaceutical patent term restoration	1	23. Non-barriers to market access	0.75
7. Regulatory data protection term	1	24. Regulatory and administrative barriers to commercialization	0.75
8. Patent opposition	1	Category 5: Enforcement	
Category 2: Copyrights, Related Rights, and Limitations			
9. Term of protection	0.63	25. Physical counterfeiting rates	0.54
10. Exclusive rights	0.5	26. Software piracy rates	0.56
11. Cooperative action against online piracy	0.5	27. Civil and procedural remedies	0.75
12. Limitations and exceptions	0.5	28. Pre-established damages	0.5
13. Digital rights management	0.75	29. Criminal standards	0.5
14. Government use of licensed software	0.5	30. Effective border measures	1
Category 3: Trademarks, Related Rights, and Limitations			
15. Term of protection	1	31. Transparency and public reporting by customs	1
16. Limitations on use of brands	1	Category 6: Membership and Ratification of International Treaties	
17. Protection of well-known marks	0.75	32. WIPO Internet Treaties	1
18. Exclusive rights	0.75	33. Singapore Treaty on the Law of Trademarks	1
		34. Patent Law Treaty	1
		35. Post-TRIPS FTA	1
TOTAL: 27.48			