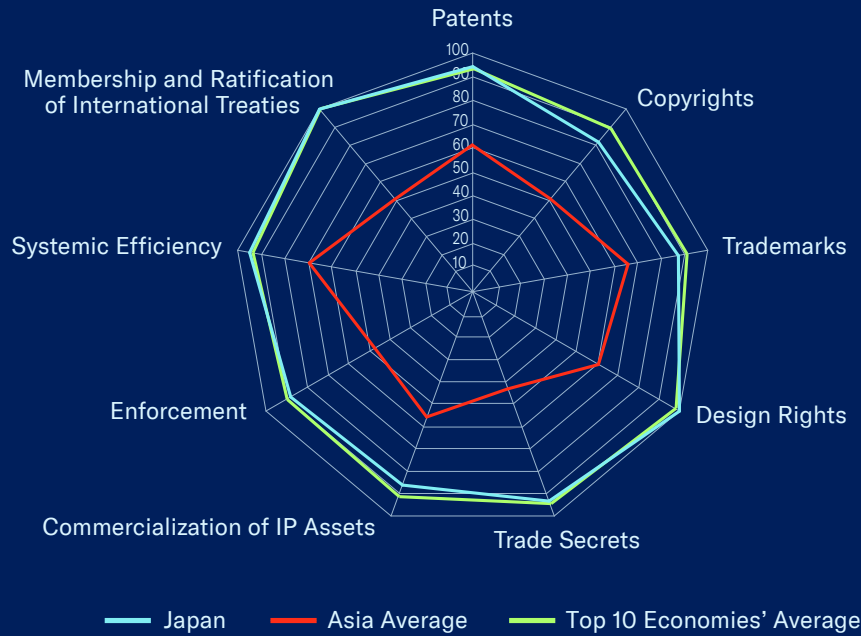
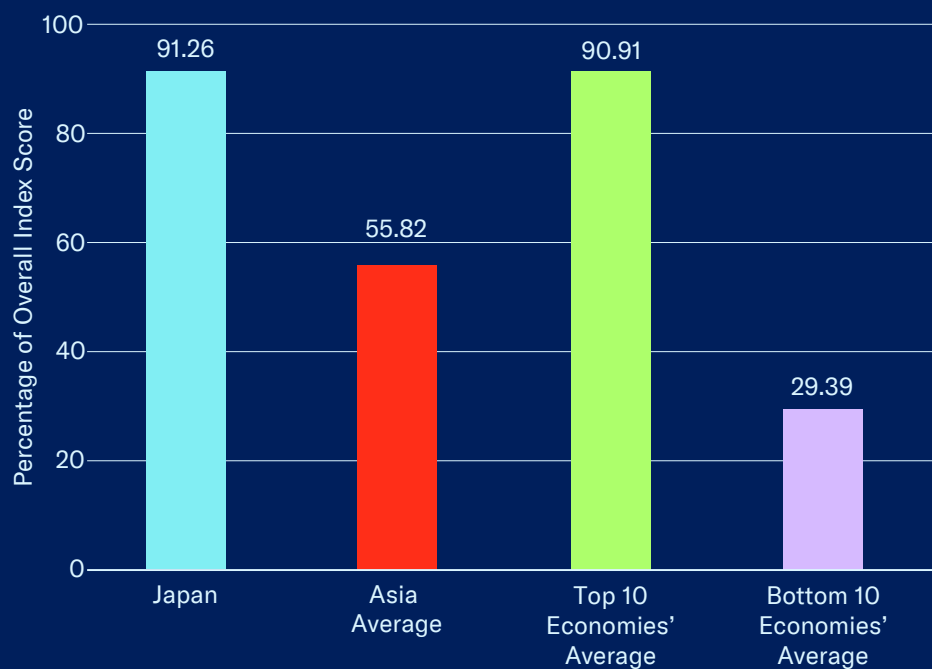
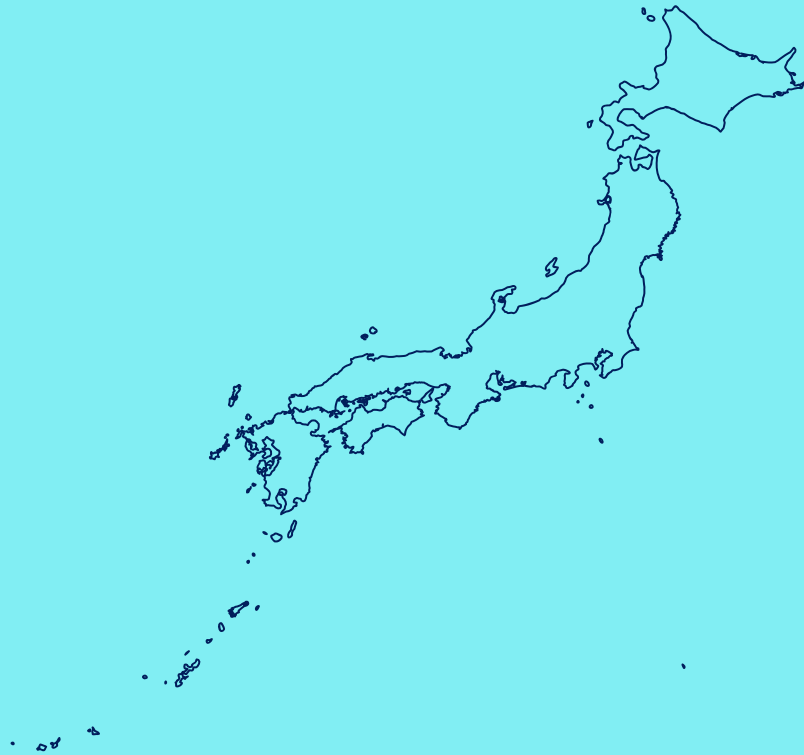


Category Scores



Overall Score in Comparison





Key Areas of Strength

- Continued strong copyright enforcement efforts in 2021
- 2020 amendments to Copyright Act continue to strengthen copyright environment
- Design Act amendments came into effect in 2020, increasing term of protection
- 2019 copyright amendments strengthen TPM laws and increase term of protection
- Global leader with respect to targeted administrative incentives for the creation and use of IP assets for SMEs
- Economic Partnership Agreement with EU—agreement includes a substantial IP chapter
- Japan has signed and acceded to all international IP treaties included in the Index
- Strong, sophisticated national IP environment in place with relevant IP rights and protection available for all major IP rights categories

Key Areas of Weakness

- Uncertainty over the protection of biopharmaceutical patent rights following approval of several follow-on drugs in 2020 by the Japanese drug regulatory authority
- No IP-specific tax incentives in place, such as a patent box regime
- Remedies against online copyright infringement remain under-developed compared to other OECD economies

| Indicator | Score |
|--|-------------|
| Category 1: Patents, Related Rights and Limitations | 8.50 |
| 1. Patent term of protection | 1.00 |
| 2. Patentability requirements | 1.00 |
| 3. Patentability of computer-implemented inventions (CIIs) | 1.00 |
| 4. Plant variety protection, term of protection | 1.00 |
| 5. Pharmaceutical-related patent enforcement and resolution mechanism | 0.50 |
| 6. Legislative criteria and use of compulsory licensing of patented products and technologies | 1.00 |
| 7. Patent term restoration for pharmaceutical products | 1.00 |
| 8. Membership of a Patent Prosecution Highway (PPH) | 1.00 |
| 9. Patent opposition | 1.00 |
| Category 2: Copyrights, Related Rights, and Limitations | 5.74 |
| 10. Copyright (and related rights) term of protection | 0.74 |
| 11. Legal measures which provide necessary exclusive rights that prevent infringement of copyrights and related rights (including Web hosting, streaming, and linking) | 1.00 |
| 12. Expeditious injunctive-style relief and disabling of infringing content online | 0.50 |
| 13. Availability of frameworks that promote cooperative action against online piracy | 0.50 |
| 14. Scope of limitations and exceptions to copyrights and related rights | 1.00 |
| 15. Technological protection measures (TPM) and digital rights management (DRM) legislation | 1.00 |
| 16. Clear implementation of policies and guidelines requiring that any proprietary software used on government ICT systems should be licensed software | 1.00 |
| Category 3: Trademarks, Related Rights, and Limitations | 3.50 |
| 17. Trademarks term of protection (renewal periods) | 1.00 |
| 18. Protection of well-known marks | 1.00 |
| 19. Legal measures available that provide necessary exclusive rights to redress unauthorized uses of trademarks | 1.00 |
| 20. Availability of frameworks that promote action against online sale of counterfeit goods | 0.50 |
| Category 4: Design Rights, Related Rights, and Limitations | 2.00 |
| 21. Industrial design term of protection | 1.00 |
| 22. Legal measures available that provide necessary exclusive rights to redress unauthorized use of industrial design rights | 1.00 |
| Category 5: Trade Secrets and the Protection of Confidential Information | 2.80 |
| 23. Protection of trade secrets (civil remedies) | 1.00 |
| 24. Protection of trade secrets (criminal sanctions) | 1.00 |
| 25. Regulatory data protection term | 0.80 |

| Indicator | Score |
|--|-------------|
| Category 6: Commercialization of IP Assets and Market Access | 5.17 |
| 26. Barriers to market access | 1.00 |
| 27. Barriers to technology transfer | 1.00 |
| 28. Registration and disclosure requirements of licensing deals | 0.75 |
| 29. Direct government intervention in setting licensing terms | 1.00 |
| 30. IP as an economic asset | 0.75 |
| 31. Tax incentives for the creation of IP assets | 0.67 |
| Category 7: Enforcement | 6.17 |
| 32. Physical counterfeiting rates | 0.83 |
| 33. Software piracy rates | 0.84 |
| 34. Civil and preceudural remedies | 0.75 |
| 35. Pre-established damages and/or mechanisms for determining the amount of damages generated by infringement | 0.75 |
| 36. Criminal standards including minimum imprisonment and minimum fines | 1.00 |
| 37. Effective border measures | 1.00 |
| 38. Transparency and public reporting by customs authorities of trade-related IP infringement | 1.00 |
| Category 8: Systemic Efficiency | 4.75 |
| 39. Coordination of IP rights enforcement | 1.00 |
| 40. Consultation with stakeholders during IP policy formation | 1.00 |
| 41. Educational campaigns and awareness raising | 1.00 |
| 42. Targeted incentives for the creation and use of IP assets for SMEs | 1.00 |
| 43. IP-intensive industries, national economic impact analysis | 0.75 |
| Category 9: Membership and Ratification of International Treaties | 7.00 |
| 44. WIPO Internet Treaties | 1.00 |
| 45. Singapore Treaty on the Law of Trademarks and Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks | 1.00 |
| 46. Patent Law Treaty and Patent Cooperation Treaty | 1.00 |
| 47. Membership of the International Convention for the Protection of New Varieties of Plants, Act of 1991 | 1.00 |
| 48. Membership of the Convention on Cybercrime, 2001 | 1.00 |
| 49. The Hague Agreement Concerning the International Registration of Industrial Designs | 1.00 |
| 50. At least one post-TRIPS FTA with substantive IP provisions and chapters in line with international best practices | 1.00 |

Total Score:
45.63



Spotlight on the National IP Environment

Past Editions versus Current Scores

Japan's overall score has increased from 91.12% (45.56 out of 50) in the ninth edition to 91.26% (45.63 out of 50) in the tenth edition. This reflects a score increase on indicator 32.

Copyrights, Related Rights, and Limitations

11. Legal measures which provide necessary exclusive rights that prevent infringement of copyrights and related rights (including Web hosting, streaming, and linking); 12. Expeditious injunctive-style relief and disabling of infringing content online; 13. Availability of frameworks that promote cooperative action against online piracy; and 14. Scope of limitations and exceptions to copyrights and related rights: As has been noted

in previous editions of the Index, online piracy and copyright infringement (in particular of Manga and Anime) are of growing concern in Japan. Over the last decade, the Japanese government has recognized this growing threat and implemented a range of important reforms, with many copyright laws strengthened and greater resources put into enforcement and educational activities. Examples include the Manga-Anime Guardians Project (an anti-piracy enforcement and educational coalition of industry, content creators, and the Japanese Ministry of Economy, Trade, and Industry, [METI]); criminal enforcement against online infringement; and legislative amendments in 2020, which, first, introduced criminal penalties and sanctions for the hosting, operation, and linking of “leech” websites and, second, made downloading all forms of copyright infringing content, not just audio and film, an offence. These positive efforts continued in 2021. Most notably, Japanese police made several arrests in relation to the infringement of copyright through so-called “fast movie” editing. These “fast movies” are condensed versions of feature films that have been edited to a shorter format of about 10-15 minutes in length. This editing and the subsequent

sharing online and commercial exploitation of this content is done without the consent, knowledge, or approval of the relevant rightsholders of the original content. It is a growing area of infringement in Japan, and the Japanese authorities should be commended for taking such decisive action. The Index will continue to monitor these efforts in 2022.

Commercialization of IP Assets and Market Access

29. Direct government intervention in setting licensing terms: As discussed in previous editions of the Index, an area of growing interest to Japanese industrial and competition policy has been the centrality of Standard and Essential Patents (SEPs) to future innovation and economic growth. In 2017, METI issued *The Intellectual Property System for the Fourth Industrial Revolution*. This report examined future challenges and proposed potential adjustments to the IP framework for technological developments that include the Internet of Things, artificial intelligence, robotics, and other cutting-edge industries that are loosely labeled as a “Fourth Industrial Revolution.” One key area discussed in the report was licensing terms and conditions for SEPs. Specifically, the report identified that the emergence and broader use of these new technologies will result in a greater utilization of SEPs as well as a concomitant increase in the number of potential legal disputes that could hold up the development and use of these new technologies and industries. The report rightly noted that the complexities and costs of negotiations and potential legal battles will increase as more fields utilize and depend on these SEPs and the underlying technologies. Addressing this issue, the report proposed the implementation of two new types of administrative procedures aimed at expediting resolutions and reducing litigation costs in patent disputes. Under the first procedure, in cases where no agreement between the parties was reached, the amount of royalties would be

determined by an administrative committee appointed by the Japanese Patent Office (JPO). Under the second pathway for private companies, a dedicated organization would manage the disputes where the parties could not reach an agreement, although the specifics for this process were unclear.

Many rightsholders expressed deep concern over this policy and its potential for direct government intervention and management of this negotiating process. To address these concerns and settle on a finalized comprehensive government policy on the issue, the JPO released the document *Guide to Licensing Negotiations Involving Standard Essential Patents* in 2018. This *Guide* is a thorough and detailed discussion of the complexities of the negotiation process and the legitimate challenges that face both the implementer and the SEP holder. Critically, the *Guide* is not prescriptive and does not provide a set formula for how negotiations should proceed or how fair, reasonable, and non-discriminatory (FRAND) terms and royalty rates should be set: “This *Guide* is not intended to be prescriptive, is in no way legally binding, and does not forejudge future judicial rulings. It is intended to summarize issues concerning licensing negotiations as objectively as possible based on the current state of court rulings, the judgment of competition authorities, and licensing practices, etc.” Specifically, with respect to determining FRAND rates, the *Guide* wisely recognizes that there is no magic formula and each negotiation is separate and unique: “This *Guide* presents factors to be considered when determining a reasonable royalty, not ‘recipes’ which can be used to automatically calculate an appropriate royalty.... Given the diversity of SEP licensing negotiations and of the circumstances in which the parties to such negotiations are placed, a solution has to be worked out in each particular case.”

The Japanese government’s work in this field continued in 2021. Beginning in March, METI’s Competition Enhancement Office and the

Intellectual Property Policy Office convened a “Study Group on Licensing Environment of Standard Essential Patents” consisting of external experts and industry representatives who met for a series of meetings. In July, the group published the results of these discussions in an interim report. Like the preceding work by the JPO, this report rightly points out the growing importance of SEPs to future economic activity—both globally and in Japan. The report also reiterates the view that as increasing numbers of products and services are based around technologies, such as the Internet of Things, they will increasingly rely on SEPs to function. With this growth in use, the number of disputes is also likely to rise. Given this reality, the report calls for greater transparency in SEP negotiations, the provision of pre-set negotiation frameworks (termed “rules on good faith negotiations”), the potential use of patent pools, and greater use of joint licensing.

As the Index noted in 2018 in connection with the JPO’s publication of the *Guide to Licensing Negotiations Involving Standard Essential Patents*, METI and the JPO should be commended for rightly identifying the importance of SEPs to future economic activity, global growth, and innovation. However, this is an evolving field of IP policy and jurisprudence for a subject matter that is deeply complex. As such, it is critical that policymakers—whether in Japan or elsewhere—tread carefully and refrain from being overly prescriptive. It is clear that there are real challenges to the SEP licensing process and that it is likely these challenges will only intensify in the years to come. The right solutions are less clear. The Index will continue to monitor these developments in 2022.