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 BRIGHTEDGE TECHNOLOGIES, INC.

10 **UNITED STATES DISTRICT COURT**
 11 **NORTHERN DISTRICT OF CALIFORNIA**
 12 **OAKLAND DIVISION**

13
 14 BRIGHTEDGE TECHNOLOGIES, INC.,

15 Plaintiff,

16 v.

17 SEARCHMETRICS GMBH and
 18 SEARCHMETRICS, INC.,

19 Defendants.

Case No. 4:14-cv-01009 HSG

**EXHIBIT A-1 TO DECLARATION
 OF JON V. SWENSON IN SUPPORT
 OF BRIGHTEDGE
 TECHNOLOGIES, INC.'S
 ADMINISTRATIVE MOTION TO
 FILE UNDER SEAL**

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 21
 22 **REDACTED VERSION OF DOCUMENTS SOUGHT TO BE SEALED**
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**THIRD AMENDED COMPLAINT
 FOR PATENT INFRINGEMENT**

DEMAND FOR JURY TRIAL

1 Plaintiff BrightEdge Technologies, Inc. (“BrightEdge”) alleges the following:

2 **THE PARTIES**

3 1. BrightEdge is a Delaware corporation with its principal place of business in San
4 Mateo, California.

5 2. On information and belief, Defendant Searchmetrics GmbH is a German limited
6 liability company with its principal place of business in Berlin, Germany.

7 3. On information and belief, Defendant Searchmetrics, Inc. is a wholly-owned
8 subsidiary of Searchmetrics GmbH and is a Delaware corporation with its principal place of
9 business in New York, New York.

10 **BACKGROUND INFORMATION**

11 4. BrightEdge provides to customers search engine optimization (“SEO”) and
12 analytical tools. Its SEO software platform became generally available in June 2010. BrightEdge
13 is the largest SEO software platform provider to thousands of major commercial brands and
14 global consumer and business-to-business companies around the world, with hundreds of direct
15 customers and many of the top professional digital marketing agencies.

16 5. BrightEdge has sought and obtained in the United States a multitude of patents
17 relating to SEO technology, including but not limited to U.S. Patent Nos. 8,135,706 (the “706
18 Patent”), 8,478,700 (the “700 Patent”), 8,478,746 (the “746 Patent”), 8,577,863 (the “863
19 Patent”), and 8,671,089 (the “089 Patent”) (collectively the “Asserted Patents”). BrightEdge has
20 marked its SEO software platform by listing the Asserted Patents on a publicly-accessible page of
21 its website to identify that Asserted Patents cover the platform. BrightEdge is the owner of all
22 right, title, and interest in the Asserted Patents and has been the owner of the Asserted Patents
23 since at least the time each was respectively issued by the United States Patent and Trademark
24 Office (“PTO”).

25 6. Defendants Searchmetrics GmbH and Searchmetrics, Inc. (collectively
26 “Searchmetrics”) compete with BrightEdge in at least the field of SEO technology.
27 Searchmetrics’ competing SEO software platform includes at least products marketed as
28 “Searchmetrics Essentials” and “Searchmetrics Suite,” in addition to all the components and

1 features thereof.

2 7. On information and belief, Searchmetrics has sold and/or is selling to customers in
3 the United States its SEO software platform, including customers in this judicial district.

4 8. On information and belief, Searchmetrics has committed and/or is committing at
5 least the following acts:

6 a. Making, using, offering for sale, and/or selling its SEO software
7 platform in the United States, and/or importing its SEO software platform
8 into the United States, despite an objectively high likelihood that its actions
9 constituted infringement of the Asserted Patents, of which it knew or
10 should have known; and/or

11 b. Intending for its customers to use its SEO software platform in the
12 United States, despite an objectively high likelihood that its actions
13 constituted infringement of the Asserted Patents, of which it knew or
14 should have known.

15 9. On information and belief, Searchmetrics had knowledge of all the Asserted
16 Patents at least as of the date Searchmetrics is served with a copy of the Complaint, the First
17 Amended Complaint, or the Second Amended Complaint.

18 10. On information and belief, Searchmetrics' customers use its SEO software
19 platform in the United States.

20 11. On information and belief, Searchmetrics operates the domain searchmetrics.com,
21 which it uses to advertise its SEO software platform to customers and/or potential customers in
22 the United States; instructs customers and/or potential customers in the United States as to how to
23 use its SEO software platform; offers for sale and/or sells its SEO software platform to customers
24 and/or potential customers in the United States; and/or imports its SEO software platform into the
25 United States.

26 12. 

27 **JURISDICTION**

28 13. This is a civil action for patent infringement arising under at least 35 U.S.C. § 271.

1 Patent infringement presents a Federal question pursuant to 28 U.S.C. § 1331, and district courts
2 have original jurisdiction over patent infringement actions pursuant to 28 U.S.C. § 1338(a).
3 Accordingly, this Court has subject matter jurisdiction over this action.

4 14. On information and belief, Defendants Searchmetrics GmbH and Searchmetrics,
5 Inc. have committed and are committing acts giving rise to this action within this judicial district
6 and/or have established minimum contacts within California and within this judicial district such
7 that the exercise of jurisdiction over them would not offend traditional notions of fair play and
8 substantial justice. Alternatively, Defendant Searchmetrics GmbH has sufficient contacts with
9 the United States as a whole to satisfy due process standards and the application of Federal law,
10 but is not subject to personal jurisdiction in the courts of California or any other state.
11 Accordingly, this Court has personal jurisdiction over Defendants Searchmetrics GmbH and
12 Searchmetrics, Inc.

13 **VENUE**

14 15. Venue is proper in this judicial district pursuant to at least 28 U.S.C. § 1400(b)
15 because personal jurisdiction is proper in this district.

16 **INTRADISTRICT ASSIGNMENT**

17 16. Pursuant to Civil L.R. 3-2(c), this is an Intellectual Property Action, which is an
18 exception to the Court's Assignment Plan. Such Actions "shall be assigned on a district-wide
19 basis."

20 **FIRST CLAIM FOR RELIEF**

21 **(Infringement of the '706 Patent)**

22 17. BrightEdge incorporates and realleges Paragraphs 1-16 of this Complaint.

23 18. On March 13, 2012, the PTO duly and lawfully issued the '706 Patent, titled
24 "Operationalizing Search Engine Optimization," a copy of which is attached as Exhibit A.

25 19. The '706 Patent discloses "determin[ing] meaningful groupings of information to
26 provide methods, processes and platforms to manage content and relevant marketing data (SEO
27 metrics) at scale for large entities possessing a large amount of content and marketing data."
28 Exhibit A at 3:33-37. Claim 1 recites "A method for managing references to an entity on a

1 network,” *id.* at 14:18-19, and Claim 11 recites “A system for optimizing online references to an
2 entity,” *id.* at 15:7-8.

3 20. On information and belief, Searchmetrics has directly infringed and is directly
4 infringing one or more claims of the ‘706 Patent by manufacturing, using, offering for sale,
5 and/or selling its SEO software platform in the United States, and/or importing its SEO software
6 platform into the United States.

7 21. On information and belief, Searchmetrics (1) has known and knows that its
8 customers’ use of its SEO software platform in the United States infringes one or more claims of
9 the ‘706 Patent and (2) has intended and intends for its customers to infringe one or more claims
10 of the ‘706 Patent by instructing and encouraging its customers to use its SEO software platform
11 in a manner that infringes the ‘706 Patent. Accordingly, on information and belief, Searchmetrics
12 has induced and is inducing infringement of one or more claims of the ‘706 Patent.

13 22. On information and belief, Searchmetrics sells and offers to sell its SEO software
14 platform in the United States to its customers and potential customers. On information and belief,
15 the Searchmetrics Suite product includes an SEO Market Share feature, which was described on
16 Searchmetrics’s website at <http://www.searchmetrics.com/en/suite/seo-market-share/>.¹ On
17 information and belief, Searchmetrics sells and offers for sale the SEO Market Share feature for
18 use in practicing one or more of the claims of the ‘706 Patent, the SEO Market Share feature is
19 material to practicing one or more of the claims of the ‘706 Patent, the SEO Market Share feature
20 has no substantial non-infringing uses, and Searchmetrics knows that the SEO Market Share
21 feature is especially made and/or especially adapted for use in infringing one or more claims of
22 the ‘706 Patent. Accordingly, on information and belief, Searchmetrics has contributed and is
23 contributing to the infringement of one or more claims of the ‘706 Patent.

24 23. On information and belief, Searchmetrics’s infringement of the ‘706 Patent has
25 been and continues to be willful. Searchmetrics has disregarded an objectively high likelihood
26 that its actions infringe the ‘706 Patent. This risk has been known to Searchmetrics or is
27 otherwise so obvious that it should have been known to Searchmetrics.

28 ¹ Last accessed May 16, 2014.

SECOND CLAIM FOR RELIEF

(Infringement of the ‘700 Patent)

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3 24. BrightEdge incorporates and realleges Paragraphs 1-23 of this Complaint.

4 25. On July 2, 2013, the PTO duly and lawfully issued the ‘700 Patent, titled
5 “Opportunity Identification and Forecasting for Search Engine Optimization,” a copy of which is
6 attached as Exhibit B. The ‘700 Patent discloses “optimizing placement of references to an
7 entity.” Exhibit B at Abstract. Claim 1 recites “A method for optimizing online references to an
8 entity that are non-paid advertisements,” *id.* at 9:2-3, and Claim 11 recites “A non-transitory
9 computer readable storage medium configured to cause a system to perform operations of
10 optimizing online references to an entity that are non-paid advertisements,” *id.* at 10:12-15.

11 26. On information and belief, Searchmetrics has directly infringed and is directly
12 infringing one or more claims of the ‘700 Patent by manufacturing, using, offering for sale,
13 and/or selling its SEO software platform in the United States, and/or importing its SEO software
14 platform into the United States.

15 27. On information and belief, Searchmetrics (1) has known and knows that its
16 customers’ use of its SEO software platform in the United States infringes one or more claims of
17 the ‘700 Patent and (2) has intended and intends for its customers to infringe one or more claims
18 of the ‘700 Patent by instructing and encouraging its customers to use its SEO software platform
19 in a manner that infringes the ‘700 Patent. Accordingly, on information and belief, Searchmetrics
20 has induced and is inducing infringement of one or more claims of the ‘700 Patent.

21 28. On information and belief, Searchmetrics sells and offers to sell its SEO software
22 platform in the United States to its customers and potential customers. On information and belief,
23 the Searchmetrics Suite product includes Traffic Forecast and Conversion Value Forecast
24 features, which were described on Searchmetrics’s website at
25 <http://www.searchmetrics.com/en/suite/forecasts/>.² On information and belief, Searchmetrics sells
26 and offers for sale the Traffic Forecast and Conversion Value Forecast features for use in
27 practicing one or more of the claims of the ‘700 Patent, the Traffic Forecast and Conversion

28 ² Last accessed May 16, 2014.

1 Value Forecast features are material to practicing one or more of the claims of the ‘700 Patent,
2 the Traffic Forecast and Conversion Value Forecast features have no substantial non-infringing
3 uses, and Searchmetrics knows that the Traffic Forecast and Conversion Value Forecast features
4 are especially made and/or especially adapted for use in infringing one or more claims of the ‘700
5 Patent. Accordingly, on information and belief, Searchmetrics has contributed and is contributing
6 to the infringement of one or more claims of the ‘700 Patent.

7 **THIRD CLAIM FOR RELIEF**

8 **(Infringement of the ‘746 Patent)**

9 29. BrightEdge incorporates and realleges Paragraphs 1-28 of this Complaint.

10 30. On July 2, 2013, the PTO duly and lawfully issued the ‘746 Patent, titled
11 “Operationalizing Search Engine Optimization,” a copy of which is attached as Exhibit C. The
12 ‘746 Patent discloses “determin[ing] meaningful groupings of information to provide methods,
13 processes and platforms to manage content and relevant marketing data (SEO metrics) at scale for
14 large entities possessing a large amount of content and marketing data.” Exhibit C at Abstract.
15 Claim 1 recites “A computer implemented method of managing references to an entity on a
16 network, the computer including a non-transitory computer storage medium,” *id.* at 14:22-24,
17 Claims 10 recites “A computer readable medium encoded with a computer program fixed in a
18 non-transitory computer storage medium having computer-executable instructions for causing a
19 computing system to perform operations of optimizing online references to an entity,” *id.* at
20 15:14-18, and Claim 20 recites “A computer implemented method of managing references to an
21 entity on a network, the computer including a non-transitory computer storage medium, *id.* at
22 16:28-30.”

23 31. On information and belief, Searchmetrics has directly infringed and is directly
24 infringing one or more claims of the ‘746 by manufacturing, using, offering for sale, and/or
25 selling its SEO software platform in the United States, and/or importing its SEO software
26 platform into the United States.

27 32. On information and belief, Searchmetrics (1) has known and knows that its
28 customers’ use of its SEO software platform in the United States infringes one or more claims of

1 the '746 Patent and (2) has intended and intends for its customers to infringe one or more claims
2 of the '746 Patent by instructing and encouraging its customers to use its SEO software platform
3 in a manner that infringes the '746 Patent. Accordingly, on information and belief, Searchmetrics
4 has induced and is inducing infringement of one or more claims of the '746 Patent.

5 33. On information and belief, Searchmetrics sells and offers to sell its SEO software
6 platform in the United States to its customers and potential customers. On information and belief,
7 the Searchmetrics Suite product includes an SEO Market Share feature, which was described on
8 Searchmetrics's website at <http://www.searchmetrics.com/en/suite/seo-market-share/>.³ On
9 information and belief, Searchmetrics sells and offers for sale the SEO Market Share feature for
10 use in practicing one or more of the claims of the '746 Patent, the SEO Market Share feature is
11 material to practicing one or more of the claims of the '746 Patent, the SEO Market Share feature
12 has no substantial non-infringing uses, and Searchmetrics knows that the SEO Market Share
13 feature is especially made and/or especially adapted for use in infringing one or more claims of
14 the '746 Patent. Accordingly, on information and belief, Searchmetrics has contributed and is
15 contributing to the infringement of one or more claims of the '746 Patent.

16 **FOURTH CLAIM FOR RELIEF**

17 **(Infringement of the '863 Patent)**

18 34. BrightEdge incorporates and realleges Paragraphs 1-33 of this Complaint.

19 35. On November 5, 2013, the PTO duly and lawfully issued the '863 Patent, titled
20 "Correlating Web Page Visits and Conversions with External References," a copy of which is
21 attached as Exhibit D.

22 36. The '863 Patent discloses "correlating external references to a Web Page with
23 conversions performed by one or more visitors to the Web Page." Exhibit D at Abstract. Claim 1
24 recites "A method for correlating an external Web Page with a conversion performed on the Web
25 Page to provide information regarding an effectiveness of an organic marketing campaign." *Id.* at
26 16:48-51.

27 37. On information and belief, Searchmetrics has directly infringed and is directly

28 ³ Last accessed May 16, 2014.

1 infringing one or more claims of the '863 Patent by manufacturing, using, offering for sale,
2 and/or selling its SEO software platform in the United States, and/or importing its SEO software
3 platform into the United States.

4 38. On information and belief, Searchmetrics (1) has known and knows that its
5 customers' use of its SEO software platform in the United States infringes one or more claims of
6 the '863 Patent and (2) has intended and intends for its customers to infringe one or more claims
7 of the '863 Patent by instructing and encouraging its customers to use its SEO software platform
8 in a manner that infringes the '863 Patent. Accordingly, on information and belief, Searchmetrics
9 has induced and is inducing infringement of one or more claims of the '863 Patent.

10 39. On information and belief, Searchmetrics sells and offers to sell its SEO software
11 platform in the United States to its customers and potential customers. On information and belief,
12 the Searchmetrics Suite product includes Traffic Forecast and Conversion Value Forecast
13 features, which were described on Searchmetrics's website at
14 <http://www.searchmetrics.com/en/suite/forecasts/>.⁴ On information and belief, Searchmetrics sells
15 and offers for sale the Traffic Forecast and Conversion Value Forecast features for use in
16 practicing one or more of the claims of the '863 Patent, the Traffic Forecast and Conversion
17 Value Forecast features are material to practicing one or more of the claims of the '863 Patent,
18 the Traffic Forecast and Conversion Value Forecast features have no substantial non-infringing
19 uses, and Searchmetrics knows that the Traffic Forecast and Conversion Value Forecast features
20 are especially made and/or especially adapted for use in infringing one or more claims of the '863
21 Patent. Accordingly, on information and belief, Searchmetrics has contributed and is contributing
22 to the infringement of one or more claims of the '863 Patent.

23 **FIFTH CLAIM FOR RELIEF**

24 **(Infringement of the '089 Patent)**

25 40. BrightEdge incorporates and realleges Paragraphs 1-39 of this Complaint.

26 41. On March 11, 2014, the PTO duly and lawfully issued the '089 Patent, titled
27 "Correlating Web Page Visits and Conversions with External References," a copy of which is

28 ⁴ Last accessed May 16, 2014.

1 attached as Exhibit E.

2 42. The '089 Patent discloses "correlating external references to a Web Page with
3 conversions performed by one or more visitors to the Web Page." Exhibit E at Abstract.
4 Claims 1 and 7 recite "A method for correlating an external reference to one or more entry web
5 pages with one or more conversions performed as a result of visits to the entry web pages to
6 provide information regarding an effectiveness of an organic marketing campaign" *id.* at 16:41-45
7 & 17:32-36, and Claim 13 recites "A method for estimating the value of an organic marketing
8 campaign," *id.* at 18:23-24.

9 43. On information and belief, Searchmetrics has directly infringed and is directly
10 infringing one or more claims of the '089 Patent by manufacturing, using, offering for sale,
11 and/or selling its SEO software platform in the United States, and/or importing its SEO software
12 platform into the United States.

13 44. On information and belief, Searchmetrics (1) has known and knows that its
14 customers' use of its SEO software platform in the United States infringes one or more claims of
15 the '089 Patent and (2) has intended and intends for its customers to infringe one or more claims
16 of the '089 Patent by instructing and encouraging its customers to use its SEO software platform
17 in a manner that infringes the '089 Patent. Accordingly, on information and belief, Searchmetrics
18 has induced and is inducing infringement of one or more claims of the '089 Patent.

19 45. On information and belief, Searchmetrics sells and offers to sell its SEO software
20 platform in the United States to its customers and potential customers. On information and belief,
21 the Searchmetrics Suite product includes Traffic Forecast and Conversion Value Forecast
22 features, which were described on Searchmetrics's website at
23 <http://www.searchmetrics.com/en/suite/forecasts/>.⁵ On information and belief, Searchmetrics sells
24 and offers for sale the Traffic Forecast and Conversion Value Forecast features for use in
25 practicing one or more of the claims of the '089 Patent, the Traffic Forecast and Conversion
26 Value Forecast features are material to practicing one or more of the claims of the '089 Patent,
27 the Traffic Forecast and Conversion Value Forecast features have no substantial non-infringing

28 ⁵ Last accessed May 16, 2014.

1 uses, and Searchmetrics knows that the Traffic Forecast and Conversion Value Forecast features
2 are especially made and/or especially adapted for use in infringing one or more claims of the '089
3 Patent. Accordingly, on information and belief, Searchmetrics has contributed and is contributing
4 to the infringement of one or more claims of the '089 Patent.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, BrightEdge prays for relief, as follows:

7 1. A judicial determination that Searchmetrics has directly infringed and directly
8 infringes at least one claim of each of BrightEdge's Asserted Patents;

9 2. A judicial determination that Searchmetrics has induced and induces infringement
10 of at least one claim of each of BrightEdge's Asserted Patents;

11 3. A judicial determination that Searchmetrics has contributed and contributes to
12 infringement of at least one claim of each of BrightEdge's Asserted Patents;

13 4. A judicial determination that Searchmetrics has willfully infringed at least one
14 claim of each of the '706 Patent;

15 5. A judicial determination finding that (1) BrightEdge has suffered an irreparable
16 injury; (2) remedies available at law are inadequate to compensate BrightEdge for that injury;
17 (3) the balance of hardships between BrightEdge and Searchmetrics favors BrightEdge; and
18 (4) the public interest would not be disserved by a permanent injunction; and permanently
19 enjoining Searchmetrics and its officers, directors, agents, employees, affiliates, attorneys,
20 parents, subsidiaries, divisions, successors, and assigns, and all others acting in privity or in
21 concert with them, from further acts of infringement of BrightEdge's Asserted Patents;

22 6. A judicial determination awarding BrightEdge all damages adequate to
23 compensate it for Searchmetrics' infringement of BrightEdge's Asserted Patents, and in no event
24 less than a reasonable royalty for Searchmetrics' acts of infringement;

25 7. A judicial determination that this is an exceptional case and awarding BrightEdge
26 its attorneys' fees pursuant to 35 U.S.C. § 285;

27 8. A judicial determination awarding BrightEdge all taxable costs it incurs in this
28 litigation;

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9. A judicial determination awarding BrightEdge pre- and post-judgment interest;
and

10. A judicial determination awarding BrightEdge any other such relief at law and/or
equity that the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff BrightEdge Technologies, Inc. hereby demands a trial by jury on all issues so
triable.

DATED: October 4, 2017

Respectfully submitted,
BAKER BOTTS L.L.P.

By: /s/ G. Hopkins Guy
G. Hopkins Guy
Attorney for Plaintiff
BRIGHTEDGE TECHNOLOGIES, INC.