

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:  SEARCHMETRICS, INC., <sup>1</sup>  Debtor.	Chapter 11  Case No. 17-11032 (CSS)
Searchmetrics, Inc. and Searchmetrics GmbH,  Plaintiffs,  v.  BrightEdge Technologies, Inc.,  Defendant.	Adv. No. 17-50478 (CSS)

**PLAINTIFFS' MOTION FOR JUDGMENT ON THE PLEADINGS  
THAT U.S. PATENT NOS. 8,135,706; 8,478,700; 8,478,746; 8,577,863;  
AND 8,671,089 DO NOT CLAIM PATENTABLE SUBJECT MATTER**

Searchmetrics, Inc., the debtor and debtor-in-possession (the “**Debtor**”) in the above-captioned chapter 11 case (the “**Chapter 11 Case**”) and Searchmetrics GmbH (“**GmbH**” and together with the Debtor, the “**Plaintiffs**” or “**Searchmetrics**”) by and through their undersigned counsel, hereby move this Court (the “**Motion**”), for the reasons set forth in *Searchmetrics, Inc. and Searchmetrics GmbH’s Memorandum of Law in Support of Motion for Judgment on the Pleadings that U.S. Patent Nos. 8,135,706; 8,478,700; 8,478,746; 8,577,863; and 8,671,089 Do Not Claim Patentable Subject Matter* (the “**Memorandum of Law**”), filed contemporaneously herewith, for an order substantially in the form attached hereto as **Exhibit A**, for a determination that the asserted claims of five patents, U.S. Patent Nos. 8,135,706 (“**the ’706 patent**”), 8,478,700

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<sup>1</sup> The Debtor in this chapter 11 case, along with the last four digits of the Debtor’s federal tax identification number, is: Searchmetrics, Inc. (1635). The mailing address for the Debtor, solely for purposes of notices and communications, is c/o EisnerAmper LLP, 750 Third Avenue, New York, New York 10017, *Attn:* Wayne P. Weitz.

(“the ’700 patent”), 8,478,746 (“the ’746 patent”), 8,577,863 (“the ’863 patent”), and 8,671,089 (“the ’089 patent”) (collectively, the “**Patents-in-Suit**”) are invalid because they do not claim patentable subject matter.

The grounds for this Motion are set forth fully in Plaintiffs’ Memorandum of Law in support of the Motion filed contemporaneously herewith and incorporated herein by reference.

Dated: May 24, 2017  
Wilmington, Delaware

**CHIPMAN BROWN CICERO & COLE, LLP**

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*Proposed Counsel for Debtor/Plaintiff, Searchmetrics, Inc.*

—and—

**DLA PIPER LLP (US)**

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*Proposed Special Litigation Counsel to Debtor/Plaintiff  
Serchmetrics, Inc. and Counsel for Plaintiff, Searchmetrics  
GmbH*

—and—

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*Counsel for Plaintiff, Searchmetrics GmbH*

# **EXHIBIT A**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:  SEARCHMETRICS, INC., <sup>1</sup>  Debtor.	Chapter 11  Case No. 17-11032 (CSS)
Searchmetrics, Inc. and Searchmetrics GmbH,  Plaintiffs,  v.  BrightEdge Technologies, Inc.,  Defendant.	Adv. No. 17-50478 (CSS)  <b>Related Adv. Docket No(s).</b> _____

**ORDER APPROVING PLAINTIFFS' MOTION FOR JUDGMENT ON THE  
PLEADINGS THAT U.S. PATENT NOS. 8,135,706; 8,478,700; 8,478,746; 8,577,863;  
AND 8,671,089 DO NOT CLAIM PATENTABLE SUBJECT MATTER**

Upon consideration of Plaintiffs' *Motion for Judgment on the Pleadings that U.S. Patent Nos. 8,135,706; 8,478,700; 8,478,746; 8,577,863; and 8,671,089 Do Not Claim Patentable Subject Matter* (the "**Motion**"); the Court having reviewed *Searchmetrics, Inc. and Searchmetrics GmbH's Memorandum of Law in Support of Motion for Judgment on the Pleadings that U.S. Patent Nos. 8,135,706; 8,478,700; 8,478,746; 8,577,863; and 8,671,089 Do Not Claim Patentable Subject Matter* (the "**Memorandum of Law**") and the Declaration of William E. Chipman, Jr. in support of the Memorandum of Law; and it appearing that this Court has jurisdiction over the Motion; and it appearing that venue of the Chapter 11 Case and the Motion in this District is proper pursuant to 28.U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the

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Motion has been given and that, except as otherwise ordered herein, no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefore,

**IT IS HEREBY ORDERED THAT:**

1. The relief requested in the Motion is GRANTED as set forth herein and for the reasons set forth in the Memorandum of Law and all evidence adduced in connection with the Motion.

2. The asserted claims of the Patents-in-Suit<sup>2</sup> are invalid under 35 U.S.C. § 101 for their failure to recite patentable subject matter.

3. Notwithstanding any provision to the contrary in the Motion, this Court retains jurisdiction over all matters arising from or related to the implementation of this Order.

Dated: \_\_\_\_\_, 2017  
Wilmington, Delaware

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Honorable Christopher S. Sontchi  
United States Bankruptcy Judge

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in *Searchmetrics, Inc. and Searchmetrics GmbH's Memorandum of Law in Support of Motion for Judgment on the Pleadings that U.S. Patent Nos. 8,135,706; 8,478,700; 8,478,746; 8,577,863; and 8,671,089 do not Claim Patentable Subject Matter.*