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The proposed evaluation steps are inconsistent with established caselaw. *See Berkheimer v. HP, Inc.*, 881 F.3d 1360 (Fed. Cir. 2018). The *Berkheimer* court noted that the claim language "storing a reconciled object structure in the archive without substantial redundancy" reflects an improvement in the functioning of a computer, as "[t]he specification states that storing object structures in the archive without substantial redundancy improves system operating efficiency and reduces storage costs." *Id.* at 1370. Under the proposed guidance, this would be enough for the Office to not make a rejection under section 101. 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50, 54 (proposed 7 January 2019) ("In the context of revised Step 2A, the following exemplary considerations are indicative that an additional element (or combination of elements) may have integrated the exception into a practical application: An additional element reflects an improvement in the functioning of a computer, or an improvement to other technology or technical field"). However, patent eligibility requires that a determination be made as to whether the additional elements are routine and conventional. *See Berkheimer*, 881 F.3d at 1367. The proposed guidance would therefore result in the Office issuing patents to patent ineligible inventions.

- William Spieler