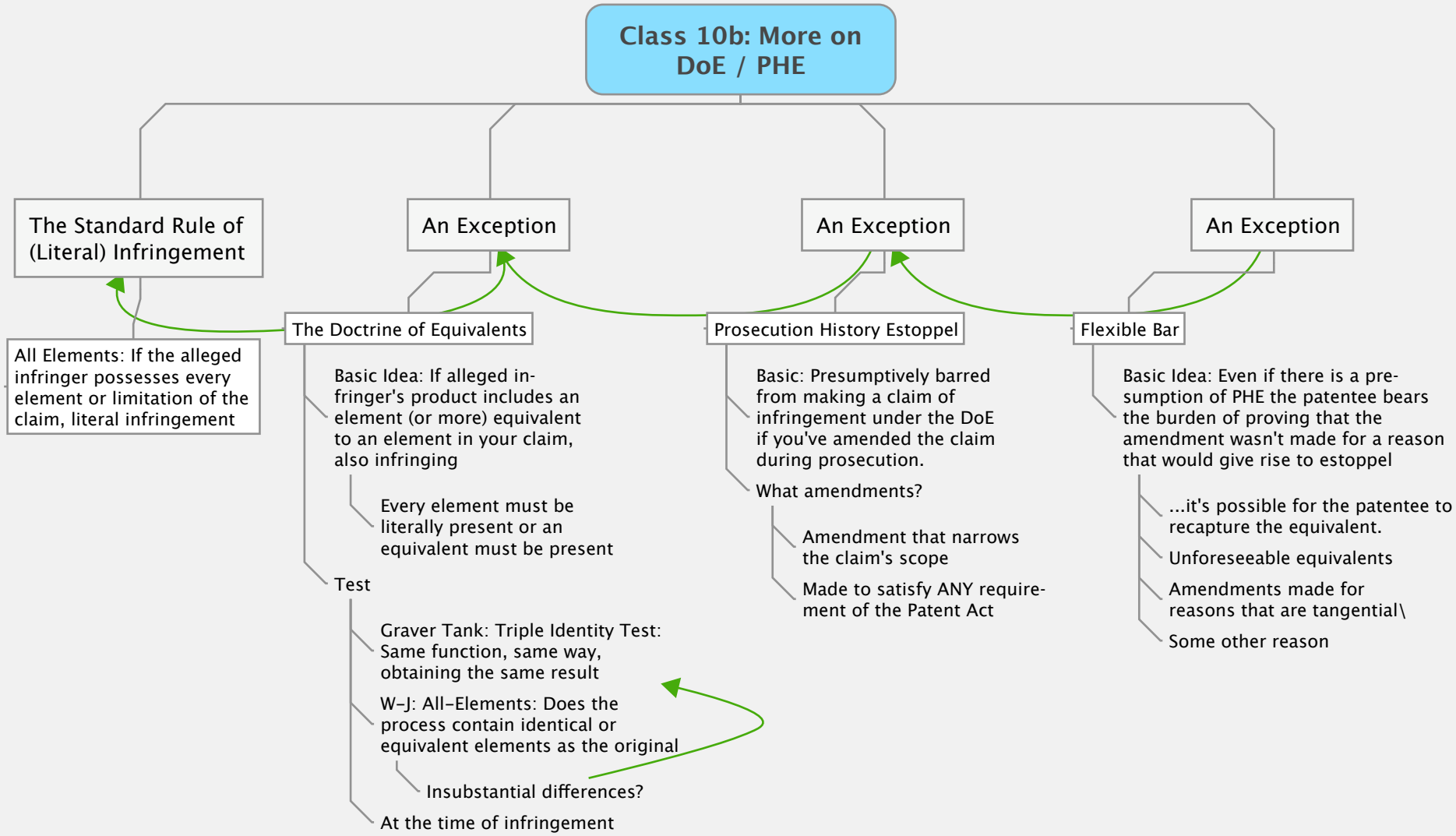
Class 10b: More on DoE / PHE
The Standard Rule of (Literal) Infringement
An Exception
An Exception
An Exception
All Elements: If the alleged infringer possesses every element or limitation of the claim, literal infringement
The Doctrine of Equivalents
Prosecution History Estoppel
Flexible Bar
Basic Idea: If alleged infringer's product includes an element (or more) equivalent to an element in your claim, also infringing
Every element must be literally present or an equivalent must be present
Test
Graver Tank: Triple Identity Test: Same function, same way, obtaining the same result
W-J: All-Elements: Does the process contain identical or equivalent elements as the original
Insubstantial differences?
At the time of infringement
Basic: Presumptively barred from making a claim of infringement under the DoE if you've amended the claim during prosecution.
What amendments?
Amendment that narrows the claim's scope
Made to satisfy ANY requirement of the Patent Act
Basic Idea: Even if there is a presumption of PHE the patentee bears the burden of proving that the amendment wasn't made for a reason that would give rise to estoppel
...it's possible for the patentee to recapture the equivalent.
Unforeseeable equivalents
Amendments made for reasons that are tangential\
Some other reason