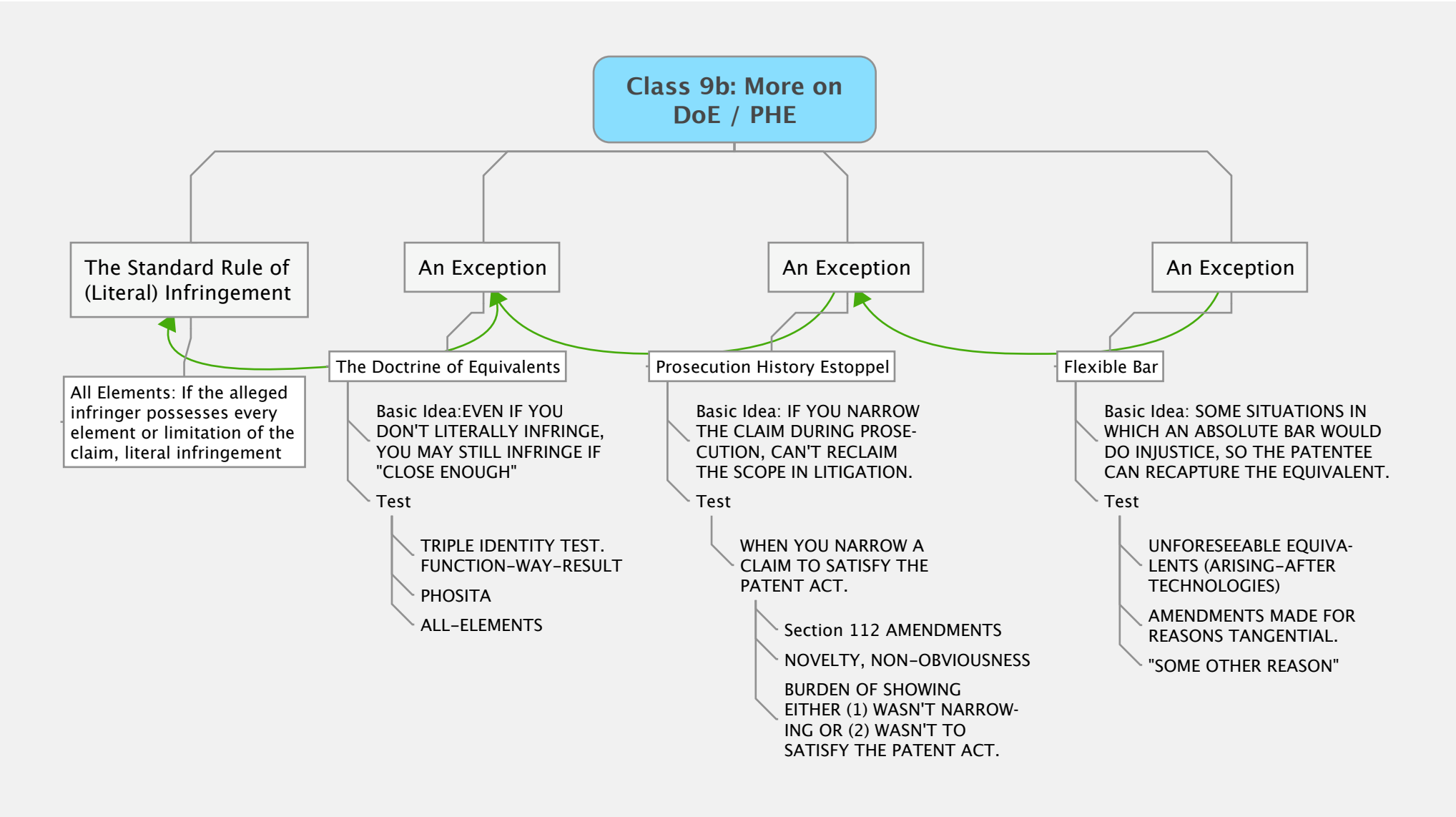
Class 9b: More on DoE / PHE
The Standard Rule of (Literal) Infringement
An Exception
An Exception
An Exception
All Elements: If the alleged infringer possesses every element or limitation of the claim, literal infringement
The Doctrine of Equivalents
Basic Idea:EVEN IF YOU DON'T LITERALLY INFRINGE, YOU MAY STILL INFRINGE IF "CLOSE ENOUGH"
Test
TRIPLE IDENTITY TEST. FUNCTION-WAY-RESULT
PHOSITA
ALL-ELEMENTS
Prosecution History Estoppel
Basic Idea: IF YOU NARROW THE CLAIM DURING PROSECUTION, CAN'T RECLAIM THE SCOPE IN LITIGATION.
Test
WHEN YOU NARROW A CLAIM TO SATISFY THE PATENT ACT.
Section 112 AMENDMENTS
NOVELTY, NON-OBVIOUSNESS
BURDEN OF SHOWING EITHER (1) WASN'T NARROWING OR (2) WASN'T TO SATISFY THE PATENT ACT.
Flexible Bar
Basic Idea: SOME SITUATIONS IN WHICH AN ABSOLUTE BAR WOULD DO INJUSTICE, SO THE PATENTEE CAN RECAPTURE THE EQUIVALENT.
Test
UNFORESEEABLE EQUIVALENTS (ARISING-AFTER TECHNOLOGIES)
AMENDMENTS MADE FOR REASONS TANGENTIAL.
"SOME OTHER REASON"