

CORRECTED

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
No. 01-699C

(Filed: May 24, 2005)

_____)
CYGNUS CORPORATION, INC.,)
)
Plaintiff,)
)
v.)
)
THE UNITED STATES,)
)
Defendant.)
_____)

ORDER

Pending before the court is Plaintiff's Notice Of Appeal To Court Of Appeals For The Federal Circuit And Motion For Extension Of Time In Which To File Notice Of Appeal. On this day, the court has separately granted Defendant's Motion To File Defendant's Opposition To Plaintiff's Motion For An Extension Of Time To File A Notice Of Appeal *Nunc Pro Tunc*, filed on May 19, 2005.

The government contends that Cygnus's motion is untimely under Fed. R. App. P. 4(a)(5)(A)(i) (court may extend time for filing notice of appeal if "a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires"). As the government would have it, the order denying Cygnus's motion for reconsideration was dated January 5, 2005, and thus the notice of appeal had to be filed by March 7, 2005. Thirty days from March 7, 2005 would have been April 6, 2005, and Cygnus did not file its notice of appeal and motion for an extension until April 11, 2005. However, the government ignores a critical circumstance in its recitation. Despite the fact that the court's order denying Cygnus's motion for reconsideration was dated January 5, 2005 (and was signed by the undersigned judge and submitted to the clerk's office on that day), that order was not actually entered and served by the clerk's office until January 10, 2005, as the docket for the case shows. Thus, Cygnus's motion for an extension was and is timely, albeit barely so.

Pursuant to Fed. R. App. P. 4(a)(5)(A), Cygnus's motion for an extension is **GRANTED**. The time to file a notice of appeal in this case is extended, *nunc pro tunc*, until April 11, 2005, the date the notice of appeal was actually filed.

It is so ORDERED.

Charles F. Lettow
Judge