

**International Bus. Machs. Corp. v GlobalFoundries
U.S. Inc.**

2022 NY Slip Op 33897(U)

November 17, 2022

Supreme Court, New York County

Docket Number: Index No. 653625/2021

Judge: Joel M. Cohen

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

-----X

INTERNATIONAL BUSINESS MACHINES CORPORATION,	INDEX NO.	<u>653625/2021</u>
Plaintiff,	MOTION DATE	<u>09/16/2022</u>
- v -	MOTION SEQ. NO.	<u>014</u>
GLOBALFOUNDRIES U.S. INC.,	DECISION + ORDER ON MOTION	
Defendant.		

-----X

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 014) 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 250, 295, 296, 297, 298, 299, 300, 301, 302

were read on this motion to

SEAL

Plaintiff International Business Machines Corporation (“IBM”) moves for an order sealing and/or redacting IBM’s Memorandum of Law in Support of its Motion to Compel (Motion Sequence 016) (the “Memorandum”) (NYSCEF 215-216, 220-221) and the exhibits filed in connection with the Memorandum (NYSCEF 199-211, 222-247). For the following reasons, IBM’s unopposed motion is **granted in part**.

The Appellate Division has emphasized that “there is a broad presumption that the public is entitled to access to judicial proceedings and court records” (*Mosallem v Berenson*, 76 AD3d 345, 348 [1st Dept 2010]). “Since the right [of public access to court proceedings] is of constitutional dimension, any order denying access must be *narrowly tailored to serve compelling objectives*, such as a need for secrecy that outweighs the public’s right to access” (*Danco Labs., Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 6 [1st Dept

2000] [emphasis added]; *see also, e.g. Gryphon Dom. VI, LLC v APP Intern. Fin. Co., B.V.*, 28 AD3d 322, 324 [1st Dept 2006]). “Furthermore, because confidentiality is the exception and not the rule, ‘the party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access’” (*Maxim, Inc. v Feifer*, 145 AD3d 516, 517 [1st Dept 2016] [citations omitted]).

The Court has reviewed the proposed sealing and redactions to the Memorandum and the exhibits filed as NYSCEF 204, 209, 232, 233, 242, and 243 and finds that they comport with the applicable sealing standard as laid out in *Mosallem*, 76 AD3d at 348-350, and its progeny, in that they contain proprietary and highly sensitive non-public information about the confidential terms of IBM’s relationship with GlobalFoundries.

However, IBM’s generalized assertions of good cause for the remaining proposed sealing and redactions do not establish a compelling justification for the broad, and in most cases complete, sealing that is proposed. While *portions* of the remaining exhibits may reveal proprietary and highly sensitive non-public information about the confidential terms of the parties’ relationship, the proposed sealing and/or redactions are not adequately explained or justified. In view of the admonition that sealing of court records must be “narrowly tailored to serve compelling objectives,” (*Danco*, 274 AD2d at 6), IBM will need to propose and justify targeted redactions that satisfy the requirements of 22 NYCRR § 216 [a] and applicable case law.

Any subsequent motion seeking to address the above concerns should adhere to this Part’s Sealing Practices and Procedures (*see* <https://www.nycourts.gov/LegacyPDFS/courts/comdiv/NY/PDFs/part3-sealing-practices.pdf>), including the requirement to submit an affidavit based on personal knowledge attesting to the factual bases for redaction, a spreadsheet identifying *each* unredacted document by NYSCEF

number and Exhibit number and setting forth a non-conclusory good faith basis for each proposed redaction.

Accordingly, it is:

ORDERED that IBM's motion to seal is **granted** insofar as it seeks to seal and/or redact the documents filed as NYSCEF Document Numbers 204, 209, 215, 216, 220, 221, 232, 233, 242, and 243, and is otherwise **denied**, without prejudice to filing a new motion within 21 days to redact confidential portions of documents consistent with this Decision and Order and applicable case law; it is further

ORDERED that the County Clerk shall maintain the documents filed as NYSCEF Document Numbers 204, 209, 216, 220, 232, and 242 under seal, so that the documents may be accessible by the parties, their counsel, and authorized court personnel; it is further

ORDERED that the County Clerk shall maintain the documents filed as NYSCEF Document Number 215, 221, 233, 243 in their current, redacted form; it is further

ORDERED that the County Clerk is directed to unseal the documents filed as NYSCEF Document Numbers 207, 208, 238 and 240. These documents were filed provisionally under seal in connection with this motion and Motion Sequence 016, but IBM no longer seeks to keep the documents under seal (*see* NYSCEF 188, at 1); it is further

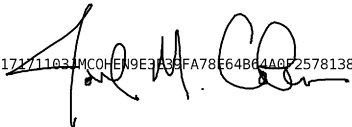
ORDERED that the documents filed as NYSCEF Document Numbers 199, 200, 201, 202, 203, 205, 206, 210, 211, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 234, 235, 236, 237, 244, 245, 246, and 247 shall remain provisionally sealed for 21 days from the date of the Court's entry of this Decision and Order on NYSCEF. If IBM files a new motion to seal or redact confidential portions of the documents consistent with this Decision and Order within that 21-day period, the documents shall remain provisionally sealed pending resolution of that

motion. If no such motion is filed within 21 days from the entry of this Decision and Order, the parties shall alert the County Clerk that the motion to seal the above-referenced documents has been denied by the Court and that the documents should be unsealed on NYSCEF; it is further

ORDERED that as it relates to future submissions, made by any party, that contain subject matter that the court has authorized to be sealed by this Decision and Order, parties may file a joint stipulation, to be So Ordered, which will authorize the filing of such future submissions to be filed in redacted form on NYSCEF, provided that an unredacted copy of any document is contemporaneously filed under seal; and it is further

ORDERED that nothing in this order shall be construed as authorizing the sealing or redactions of any documents or evidence to be offered at trial.

This constitutes the Decision and Order of the Court.

202211171711031MCOHEN9E333FA78E64B64A0F2578138401D3B


JOEL M. COHEN, J.S.C.

11/17/2022

DATE

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
APPLICATION:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>				REFERENCE
			<input type="checkbox"/>	DENIED	