

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

2022 NY Slip Op 34064(U)

November 30, 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, <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">- v -</p> GLOBALFOUNDRIES U.S. INC., <p style="text-align: center;">Defendant.</p>	<table border="0"> <tr> <td style="width: 30%;">INDEX NO.</td> <td style="border-bottom: 1px solid black;">653625/2021</td> </tr> <tr> <td>MOTION DATE</td> <td style="border-bottom: 1px solid black;">10/03/2022, 10/07/2022</td> </tr> <tr> <td>MOTION SEQ. NO.</td> <td style="border-bottom: 1px solid black;">017 019</td> </tr> </table> <p style="text-align: center;">DECISION + ORDER ON MOTION</p>	INDEX NO.	653625/2021	MOTION DATE	10/03/2022, 10/07/2022	MOTION SEQ. NO.	017 019
INDEX NO.	653625/2021						
MOTION DATE	10/03/2022, 10/07/2022						
MOTION SEQ. NO.	017 019						

-----X

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 017) 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 294, 327

were read on this motion to SEAL/REDACT.

The following e-filed documents, listed by NYSCEF document number (Motion 019) 317, 318, 319, 321 were read on this motion to SEAL.

Defendant GlobalFoundries U.S. Inc. (“GlobalFoundries”) moves for an order sealing and/or redacting its memorandum of law in opposition to Plaintiff International Business Machine’s (“IBM”) motion to compel (the “Opposition”), certain exhibits which were filed in connection with the Opposition (the “Exhibits”), and an order provisionally sealing four documents that were produced by IBM in this matter and filed in connection with the Opposition (the “IBM Documents”) (*see* NYSCEF 271) (Motion Sequence 017). IBM has subsequently moved for an order permanently sealing the IBM Documents (*see* NYSCEF 318) (Motion Sequence 019). For the following reasons, both GlobalFoundries’ motion and IBM’s motion are **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 GlobalFoundries’ proposed sealing and redactions to the Opposition 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 the parties’ relationship and other confidential trade information.

However, GlobalFoundries’ generalized assertions of good cause for the Exhibits do not establish a compelling justification for the complete sealing that is proposed. While *portions* of the Exhibits may reveal proprietary and highly sensitive non-public information about the confidential terms of the parties’ relationship, the proposed sealing is 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), GlobalFoundries will need to propose

and justify targeted redactions that satisfy the requirements of 22 NYCRR § 216 [a] and applicable case law.

With respect to IBM's motion, the Court finds the proposed sealing to the January 25, 2017 IBM Presentation filed as NYSCEF Document Numbers 264 and 285 comports with the sealing standard as laid out in *Mosallem*, 76 AD3d at 348-350, and its progeny, in that it contains proprietary and highly sensitive non-public information that would harm IBM's competitive standing if publicly disclosed. However, IBM has failed to establish a compelling justification for the complete sealing proposed of the remaining documents. Similarly, while portions of the documents may contain proprietary and highly sensitive non-public information about the confidential terms of IBM's relationships with GlobalFoundries and Samsung, IBM has not adequately explained or justified the proposed sealings. IBM will likewise 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 and a spreadsheet setting forth a non-conclusory good faith basis for each proposed redaction.

Accordingly, it is:

ORDERED that GlobalFoundries' motion to seal and/or redact is **granted in part**; it is further

ORDERED that the County Clerk shall maintain the documents filed as NYSCEF Document Numbers 255, 276, 278, 280, 288, and 289 in their current, redacted form; it is further

ORDERED that the County Clerk shall maintain the documents filed as NYSCEF Document Numbers 256 and 290 under seal, so that the documents may only be accessible by the parties, their counsel, and authorized court personnel; it is further

ORDERED that the documents filed as NYSCEF Document Numbers 259, 260, 261, 265, 275, 277, 279, and 287 shall remain provisionally sealed for 21 days from the date of the Court's entry of this Decision and Order on NYSCEF. If GlobalFoundries 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 IBM's motion to seal is **granted in part**; it is further

ORDERED that the County Clerk shall maintain the documents filed as NYSCEF Document Number 274, 282, 284, and 286 in their current, redacted form; it is further

ORDERED that the County Clerk shall maintain the documents filed as NYSCEF Document Numbers 264 and 285 under seal, so that the documents may only be accessible by the parties, their counsel, and authorized court personnel; it is further

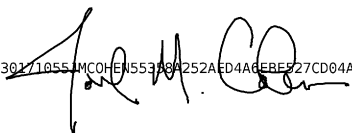
ORDERED that the documents filed as NYSCEF Document Numbers 258, 262, 263, 273, 281, and 283 shall remain provisionally sealed for 21 days from the date of the Court's entry of this Decision and Order on NYSCEF. If IBM files a new motion to seal or redact

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 as it relates to future submissions, made by any party, that contain subject matter that the Court has authorized to be sealed by this 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 redacted 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.

202211302710551MCOHEN553804252AED4ACBEE527CD04A4234AB


JOEL M. COHEN, J.S.C.

11/30/2022

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"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
			<input type="checkbox"/>	DENIED	OTHER
					REFERENCE