

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

2022 NY Slip Op 34233(U)

December 9, 2022

Supreme Court, New York County

Docket Number: Index No. 653625/2021

Judge: Joel M. Cohen

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

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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%;"><b>INDEX NO.</b></td> <td style="border-bottom: 1px solid black;">653625/2021</td> </tr> <tr> <td><b>MOTION DATE</b></td> <td style="border-bottom: 1px solid black;">10/07/2022, 10/28/2022</td> </tr> <tr> <td><b>MOTION SEQ. NO.</b></td> <td style="border-bottom: 1px solid black;">018 020</td> </tr> </table> <p style="text-align: center;"><b>DECISION + ORDER ON MOTION</b></p>	<b>INDEX NO.</b>	653625/2021	<b>MOTION DATE</b>	10/07/2022, 10/28/2022	<b>MOTION SEQ. NO.</b>	018 020
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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 018) 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 320 were read on this motion to SEAL/REDACT.

The following e-filed documents, listed by NYSCEF document number (Motion 020) 324, 325, 326, 328, 329 were read on this motion to SEAL.

Plaintiff International Business Machines Corporation (“IBM”) moves for an order sealing and/or redacting its memorandum of law in further support of its motion to compel the production of documents (the “Reply Brief”) (NYSCEF 295-296) and provisionally sealing four exhibits filed in connection with the Reply Brief (the “Exhibits”) (NYSCEF 298-301) (Motion Sequence 018). Defendant GlobalFoundries U.S. Inc. (“GlobalFoundries”) has subsequently moved for an order permanently sealing three of the four Exhibits (Motion Sequence 020). For the following reasons, both IBM’s motion and GlobalFoundries’ 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 IBM’s proposed sealing and redactions to the Reply Brief 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, the “disclosure [of which] could harm [GlobalFoundries’] competitive standing” (*Mancheski v Gabelli Grp. Cap. Partners*, 39 AD3d 499, 502 [2d Dept 2007]).

With respect to GlobalFoundries’ motion to permanently seal certain of the Exhibits, the Court finds the proposed sealing of the documents filed as Exhibit U and V to the Reply Brief (NYSCEF 298 and 299, respectively) likewise comport with the applicable sealing standard as laid out in *Mosallem*, 76 AD3d at 348-350, and its progeny, in that they contain highly sensitive, non-public details about the parties’ contractual relationships, confidential and commercially sensitive information concerning business plans and strategies, and GlobalFoundries’ relationships with other customers who are not parties to this action.

However, GlobalFoundries failed to establish a compelling justification for the complete sealing proposed in Exhibit X to the Reply Brief (NYSCEF 301). While portions of the documents may contain proprietary and highly sensitive non-public information about the

confidential terms of the parties' relationship, GlobalFoundries has not adequately explained or justified the proposed sealing. GlobalFoundries 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 and a spreadsheet setting forth a non-conclusory good faith basis for each proposed redaction.

Finally, the Court notes GlobalFoundries did not move to permanently seal the document filed as Exhibit R to the Reply Brief, filed as NYSCEF Document Number 300 (*see* NYSCEF 326). Because IBM sought to provisionally seal this document to enable GlobalFoundries to request permanent sealing, and GlobalFoundries has not done so here, the document will be ordered unsealed.

Accordingly, it is:

**ORDERED** that IBM's motion to seal and/or redact (Motion Sequence 018) is **granted in part**; it is further

**ORDERED** that the County Clerk shall maintain the documents filed as NYSCEF Document Numbers 295 and 308 in their current, redacted form; it is further

**ORDERED** that the County Clerk shall maintain the documents filed as NYSCEF Document Numbers 296 and 307 under seal, so that the documents may only be accessible by the parties, their counsel, and authorized court personnel; it is further

**ORDERED** that GlobalFoundries' motion to seal (Motion Sequence 020) is **granted in part**; it is further

**ORDERED** that the County Clerk shall maintain the documents filed as NYSCEF Document Numbers 312, 314, and 316 in their current, redacted form; it is further

**ORDERED** that the County Clerk shall maintain the documents filed as NYSCEF Document Numbers 298, 299, 311, and 315 under seal, so that 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 301 and 313 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

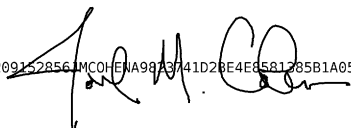
**ORDERED** that County Clerk is directed to unseal the documents filed as NYSCEF Document Numbers 300 and 309. These documents were provisionally filed under seal in connection with Motion Sequences 014 and 018, but GlobalFoundries has not sought to permanently seal the documents (*see* NYSCEF 326); 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.

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12/9/2022  
DATE

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JOEL M. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE