

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

2023 NY Slip Op 30203(U)

January 19, 2023

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,  Plaintiff,  - v -  GLOBALFOUNDRIES U.S. INC.,  Defendant.	INDEX NO. <u>653625/2021</u>  MOTION DATE <u>11/16/2022,</u> <u>12/09/2022</u>  MOTION SEQ. NO. <u>021 023</u>  <b>DECISION + ORDER ON</b> <b>MOTION</b>
--	--

-----X

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 021) 354, 355, 356, 357 were read on this motion to \_\_\_\_\_ SEAL \_\_\_\_\_.

The following e-filed documents, listed by NYSCEF document number (Motion 023) 372, 373, 374, 376, 398 were read on this motion to \_\_\_\_\_ SEAL \_\_\_\_\_.

Plaintiff International Business Machines Corporation (“IBM”) moves for an order provisionally sealing eighteen exhibits attached to IBM’s Rule 14 Letter dated October 11, 2022, which were produced by Defendant GlobalFoundries U.S. Inc. (“GlobalFoundries”) and have been designated “Confidential,” “Highly Confidential,” or “Highly Confidential – Attorney’s Eyes Only” (Motion Sequence 021) (NYSCEF 355). GlobalFoundries subsequently moves to permanently seal certain of those exhibits (Motion Sequence 023) (NYSCEF 373). For the following reasons, IBM’s motion is **denied** as moot (because it was superseded by GlobalFoundries’ motion), and GlobalFoundries’ motion is **granted in part**.

Pursuant to § 216.1 (a) of the Uniform Rules for Trial Courts, this Court may seal a filing “upon a written finding of good cause, which shall specify the grounds thereof. In determining

whether good cause has been shown, the court shall consider the interests of the public as well as of the parties” (22 NYCRR § 216.1 [a]).

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 of the documents identified as Exhibits J and S (NYSCEF 341, 350) 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 sealing the documents identified as Exhibits E and K (NYSCEF 336, 342) is insufficient. 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.

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 does not find good cause to seal Exhibits F, P, and Q (NYSCEF 337, 347, 348). The fact the parties have stipulated to sealing documents, or that they have designated the documents during discovery as “Confidential” or “Highly Confidential,” does not, by itself, justify granting motion to seal (*see, e.g., Maxim*, 145 AD3d at 518; *Gryphon*, 28 AD3d at 324). The Court also notes that GlobalFoundries does not seek to permanently seal the documents identified as Exhibits C, D, G, H, I, L, M, N, O, R, and U (NYSCEF 334, 335, 338, 339, 340, 343, 344, 345, 346, 349, and 350 in its instant motion) (*see* NYSCEF 373 at 2). As a result, these documents will be unsealed.

Accordingly, it is:

**ORDERED** that IBM’s motion to provisionally seal (Motion Sequence 021) is **denied** as moot insofar as it was superseded by GlobalFoundries’ motion; it is further

**ORDERED** that GlobalFoundries motion to permanently seal (Motion Sequence 023) is **granted in part**; it is further

**ORDERED** that the County Clerk shall maintain the documents filed as NYSCEF Document Numbers 341 and 350 under seal, so that the documents may only be accessible by the parties, their counsel, and authorized court personnel; it is further

**ORDERED** that Clerk unseal the documents filed as NYSCEF Document Numbers 334, 335, 337, 338, 339, 340, 343, 344, 345, 346, 347, 348, 349, and 352; it is further

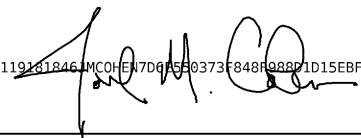
**ORDERED** that the documents filed as NYSCEF Document Numbers 336 and 342 shall remain provisionally sealed for 21 days from the date of the Court's entry of this Decision and Order on NYSCEF. If GlobalFoundries files a new motion to seal or redact confidential portions of the documents consistent 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** 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.

20230119231846 MCOHEN7D9A550373F848F088F1D15EBFF1F611



JOEL M. COHEN, J.S.C.

1/19/2023

DATE

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