

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

2023 NY Slip Op 31028(U)

March 23, 2023

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,

Plaintiff,

- v -

GLOBALFOUNDRIES U.S. INC.,

Defendant.

INDEX NO. 653625/2021

MOTION DATE 02/22/2023,  
N/A

MOTION SEQ. NO. 032 038

**DECISION + ORDER ON  
MOTION**

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 032) 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 548

were read on this motion to SEAL/REDACT

The following e-filed documents, listed by NYSCEF document number (Motion 038) 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 604

were read on this motion to SEAL/REDACT

Plaintiff International Business Machines Corporation (“IBM”) moves for an order provisionally sealing unredacted copies of IBM’s Memorandum of Law in Support of its Motion to Compel (NYSCEF 508) (the “Motion to Compel”) and 15 of the exhibits attached thereto (NYSCEF 492-507) until Defendant GlobalFoundries U.S. Inc. (“GlobalFoundries”) moves for an order permanently sealing and/or redacting the Motion to Compel and the exhibits (Motion Sequence 031) (see NYSCEF 511). GlobalFoundries subsequently moves for an order permanently sealing and/or redacting nine of the exhibits filed in connection with the Motion to Compel. Specifically, GlobalFoundries seeks to seal and/or redact the documents identified as Exhibits B, C, E, F, G, H, J, K, L (NYSCEF 493-94, 496-499, 501-503) (the “Exhibits”) (Motion

Sequence 038) (*see* NYSCEF 593). For the following reasons, IBM’s motion is **denied** as moot (because it was superseded by GlobalFoundries’ motion), and GlobalFoundries’ motion is **granted**.

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 and redactions of the Exhibits 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 highly confidential and commercially sensitive information regarding GlobalFoundries’ financial and technical status and other proprietary information concerning agreements with IBM and other customers, the “disclosure

[of which] could harm [GlobalFoundries'] competitive standing" (*Mancheski v Gabelli Grp. Cap. Partners*, 39 AD3d 499, 502 [2d Dept 2007]). The Court also notes that GlobalFoundries does not seek to permanently seal the Memorandum of Law in Support of the Motion to Compel (NYSCEF 508), nor the documents identified as Exhibits A, D, I, M, N, O, and P (NYSCEF 492, 495, 500, 504, 505, 506, 507). As a result, these documents will be unsealed.

Accordingly, it is

**ORDERED** that IBM's motion to provisionally seal (Motion Sequence 032) is **denied** as moot; it is further

**ORDERED** that GlobalFoundries' motion to seal and/or redact (Motion Sequence 038) is **granted**; it is further

**ORDERED** that the Clerk shall maintain the documents filed as NYSCEF Document Numbers 493, 494, 496, 497, 498, 499, 501, 502, 503, 516, 517, 519, 520, 521, 522, 524, 525, 526 under seal so that they may only be accessible by the parties, their counsel, and authorized court personnel; it is further

**ORDERED** that the Clerk shall maintain the documents filed as NYSCEF Document Numbers 532, 533, 535, 536, 537, 538, 540, 541, 542, 595, 596, 597, 598, 599, and 600 in their current, redacted form; it is further

**ORDERED** that the Clerk is directed to unseal the documents filed as NYSCEF Document Numbers 492, 495, 500, 504, 505, 506, 507, and 508; 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 Order, parties may file a joint stipulation, to be So Ordered, which will authorize the filing of such future submissions to be

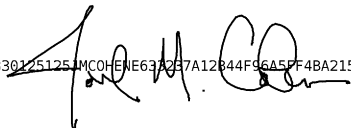
filed in redacted form on NYSCEF, provided that an unredacted copy of any redacted document is contemporaneously filed under seal; and it is further

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

This constitutes the Decision and Order of the Court.

3/23/2023

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