

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

2023 NY Slip Op 31236(U)

April 10, 2023

Supreme Court, New York County

Docket Number: Index No. 653640/2021

Judge: Joel M. Cohen

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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

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GLOBALFOUNDRIES U.S. INC.	INDEX NO. <u>653640/2021</u>
Plaintiff,	MOTION DATE <u>N/A</u>
- v -	MOTION SEQ. NO. <u>001</u>
INTERNATIONAL BUSINESS MACHINES CORPORATION,	<b>DECISION + ORDER ON MOTION</b>
Defendant.	
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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7, 8, 9, 10, 17, 18, 19, 20

were read on this motion to SEAL/REDACT.

Plaintiff GlobalFoundries U.S. Inc. (“GlobalFoundries”) moves for an order sealing and/or redacting GlobalFoundries’ Complaint (NYSCEF 2, 20) and the documents identified as Exhibits 1-8 (NYSCEF 3-10) (collectively, the “Exhibits”) “to protect confidential information” (NYSCEF 18). For the reasons stated below, GlobalFoundries’ unopposed 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 the proposed sealing and redactions to GlobalFoundries’ Complaint (NYSCEF 2, 20) 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 [the parties’] competitive standing” (*Mancheski v Gabelli Grp. Cap. Partners*, 39 AD3d 499, 502 [2d Dept 2007]).

The Court has also reviewed the Exhibits filed and finds that GlobalFoundries’ generalized assertions of good cause do not establish a compelling justification for the complete sealing that is proposed. While portions of the Exhibits may include protectable trade secrets, confidential business information, or proprietary information, the proposed redactions and/or sealing are not adequately explained or justified. For example, GlobalFoundries seeks to seal NYSCEF 3, 4, and 5 in their entirety, without any attempt to isolate the specific portions of those documents that justify sealing under the rigorous standards described above. 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. Such redactions should conform to redactions approved as to the same or substantially similar documents by this Court's sealing decisions in *International Business Machines Corporation v. GlobalFoundries U.S. Inc.*, Index No. 653625/2021 (including NYSCEF 415 in that case).

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** to the extent GlobalFoundries seeks to seal and/or redact the Complaint and **denied** to the extent GlobalFoundries seeks to seal the Exhibits 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 Clerk shall maintain the document filed as NYSCEF Document Number 20 under seal so that the document may only be accessible by the parties, their counsel, and authorized court personnel; it is further

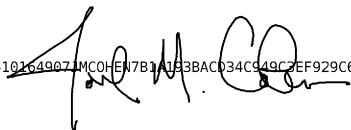
**ORDERED** that the Clerk shall maintain the document filed as NYSCEF Document Number 2 in its current, redacted form; it is further

**ORDERED** that the documents filed as NYSCEF Document Numbers 3, 4, 5, 6, 7, 8, 9, and 10 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; 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.

  
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**JOEL M. COHEN, J.S.C.**

4/10/2023  
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